TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 225.

AUGUSTA A. PETERSON AND IDA PETERSON, A MINOR,
PLAINTIFFS IN ERROR,

vs.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

FILED MARCH 16, 1906.

(20,131.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 5, 1906.

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1 *Caption.*

Be it remembered, that at a term of the Circuit Court of the United States, in the Fifth Circuit, and in and for the Northern District of Texas, at Fort Worth, begun and holden on the 6th day of November A. D. 1905, and which term adjourned on the 6th day of January A. D. 1906, the Honorable Edward R. Meek, United States District Judge for the Northern District of Texas, presiding, the following cause came on to be heard upon defendant's motion to quash the service of process on defendant, to-wit:

No. 320.

AUGUSTA A. PETERSON ET AL.
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

2 *Plaintiffs' Original Petition.*

Filed July 30th, 1904.

In the United States Circuit Court for the Northern District of Texas, at Fort Worth.

No. —.

AUGUSTA A. PETERSON ET AL.
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

To the Honorable, the Judges of the Circuit Court of the United States in and for the Northern District of Texas:

Augusta A. Peterson and Ida Peterson, the latter a minor without guardian, suing by her mother and next friend, the said Augusta, herein styled plaintiffs, complaining of the Chicago, Rock Island & Pacific Railway Company, hereinafter called the Rock Island Company, and styled defendant, respectfully represent:

That plaintiffs are citizens of the state of Texas, and residents of Tarrant county of said state; that the defendant Rock Island Company is a railroad corporation duly incorporated and organized under the laws of the state of Illinois. That heretofore, to-wit: on the 19th day of October 1903, and for a long time prior thereto the said defendant Rock Island Company owned and operated as a common carrier of freights and passengers, a line of railway with various and divers connecting branches then and there extending from the city of Chicago in the state of Illinois, in a southwesterly direction into and through the state of Missouri, Kansas and into and through the Territory of Oklahoma and the Indian Territory to Red River on the south line of said Indian Territory.

That on to-wit: the last named day, and for a long time prior thereto, the defendant operated and now operates the Chicago, Rock Island & Gulf Railway Company, a corporation duly and legally incorporated and organized under the laws of the State of Texas in connection with said Rock Island Company, which Chicago, Rock Island & Gulf extends from said Red River through various counties in the state of Texas to the city of Fort Worth in Tarrant county, Texas. That said two lines of railway then and there connected, and yet connect with each other at said Red River and formed and yet form one continuous line of railway from said
3 city of Chicago to said Oklahoma Territory and the Indian Territory, and into the state of Texas to the city of Fort Worth.

Plaintiffs say that on to-wit: the last named date and for a long time prior thereto the defendant, the Rock Island Company, and said Chicago, Rock Island & Gulf Railway Company were engaged in operating said lines of railway as a single system, and as a single line, which was known and advertised by said companies as the Rock Island System. That while said two companies were separately incorporated, as aforesaid, they were in truth and in fact, and ever have been, substantially one company, and that said lines of railway were in truth and in fact, and ever have been, owned and operated by said companies as parts of the same system. That said companies in operating said lines and railway have been and yet are acting together as partners and as agents of each other. That said Rock Island Company was then and there, and ever has been, and is yet the dominant or parent company or corporation. That said Chicago, Rock Island & Gulf Railway Company was and ever has been but a subordinate and ancillary corporation, which was organized and incorporated by and at the instance of the said Rock Island Company, as an agency through which to enable said *said* last named company to extend and operate its said line of railway into the said city of Fort Worth. That said Chicago, Rock Island & Gulf Railway Company is now and has ever been completely dominated and controlled by said Rock Island Company, and is now and was at the date aforesaid the agent in Texas of said Rock Island Company, and that said last named company has heretofore transacted and yet transacts its business in Texas through and from the general offices and through and by the general officers and local agents of the said Chicago, Rock Island & Gulf Railway Company. That while the officers and local agents of said Chicago, Rock Island & Gulf Railway Company are employed ostensibly by said last named company, said officers and agents are and ever have been in reality acting for and in behalf of said Rock Island Company, and for said system. That said Rock Island Company is thus engaged in doing business in the State of Texas, and that it has officers and local agents in said state. That S. B. Hovey, who resides in Tarrant county, Texas, is the vice president and general manager of said Chicago, Rock Island & Gulf Railway Company, and is also general manager and local agent in Texas of said Rock Island Company; and that F. E. Merrell, who resides in Fort Worth,

Tarrant county, Texas, is the local agent in said county for
4 both the defendant, the Rock Island Company, and the Chicago, Rock Island & Gulf Railway Company and for said system. That heretofore, to-wit: on the 19th day of October 1903, said two lines of railway were then and there owned and operated as one continuous line of railway, extending as aforesaid, from the city of Chicago to the city of Fort Worth. Plaintiff says that the first division of said system going northward extends from Fort Worth to the city of Chickasha in the Chickasaw Nation in the Indian Territory, and that M. E. Sebree, who resides and has his office in Tarrant county, Texas, is the trainmaster on said division and is a local agent in Texas for said defendant.

For cause of action plaintiffs allege that on to-wit: the day and year last aforesaid John Peterson, the husband of Augusta, and father of Ida Peterson, was in the employment and service of the defendant, the Rock Island Company, as a locomotive engineer on one of defendant's engines, pulling a freight train between Chickasha in the Indian Territory and the city of Fort Worth, Texas, at which first named place said defendant then and there had and maintained large and extensive yards with a complicated system of switches and tracks for the making and breaking up and handling of trains, and for the movement of such trains. That said defendant also then and there had and maintained a round house and machine shops wherein a large force of men were constantly employed, and that it then and there maintained at said point its division headquarters for several of its divisions, with a corps of division officers, including a division superintendent. That the men working in said yards were employed and discharged by such division officers, who were then and there charged with the duty of employing only competent and skilled men for service in said yards. That said train on which said Peterson was engineer, as aforesaid, was drawn by two engines and what is commonly called a "double header." That on the date last aforesaid, about six o'clock p. m. of said day, in the yards of the defendant, the Rock Island Company, at Chickasha in the Indian Territory, the engines used in drawing said train were brought out of the round house and placed upon an outer switch call the "dead track" properly coaled, watered and fired up preparatory to going on the run from Chickasha to Fort Worth, which said Peterson and the other members of said crew had been then and there by the proper authorities ordered and directed to make.

5 That while said Peterson was discharging the duties of his employment in aiding the brakeman in coupling his—Peterson's—engine onto the other engine used in hauling said train, and while he was passing between said engines, which were standing near each other on said "dead track" to the opposite side of same so as to get in position to insert the pin in the coupling bar or beam so as to hold same in its proper position to couple said engines together, a switch engine of the defendant Rock Island Company at work on the defendant's yards at said place was negligently and

carelessly run upon said "dead track" where said two engines were standing, as aforesaid, and without any notice or warning of any kind, with great force collided with said Peterson's said engine, forcing the same back against and upon the other engine with great violence. That said Peterson was caught between said engines in said collision and crushed, bruised and mangled and so injured that he died from said injury on the next day, the 20th of October 1903. Plaintiffs allege that the track upon which said engines were placed and standing was intended to be used exclusively for the accommodation of road engines coming into and going out from said round house at said place, which was the end of a division of said road, as aforesaid, and that no other engines, cars or rolling stock of any kind should have been allowed on said tracks, and that at the time of said accident said Peterson did not know and could not have known by any means whatever that said switch engine would be run in and upon said track where it had no right to go and where, by the rules of said company, it was forbidden to go, but assumed, as he had a right to do, that said track would be kept free, unused and unmolested by any engines or cars while his engine was occupying the same and while he was thus engaged in coupling his engines, as aforesaid, preparatory to going out with his train, as aforesaid, and as he had been ordered to do.

Plaintiffs allege that the said John Peterson was at the time of his injury and death a highly skilled, careful and competent locomotive engineer, popular with his employers and co-employés, healthy, strong and active, being at the time of said accident thirty-nine years of age. That he was a kind and affectionate husband, who provided well and amply for his said family, and was capable of earning by virtue of his skill and competency in his line of employment, as aforesaid, much money, and was earning and had been for a long time theretofore, the sum of to-wit: $150.00 per
6 month. That said Peterson died intestate and no administration has been granted upon his estate and none is necessary.

Plaintiffs aver that the cause of the accident and injury to the said John Peterson which caused his death, as aforesaid, was the culpable and gross carelessness and negligence of the switchman of the switch engine, who was at the time working with said switch engine which ran in and upon the "dead track" where said Peterson's engine was standing, and who was wholly unfitted and incompetent for such work, being almost entirely without experience in such employment. That through the ignorance, inexperience and incompetency, gross carelessness and negligence of said switchman instead of throwing the right and proper switch as he should have done and sending the switch engine down the round house track, where it was intended to go, and where it should have gone, negligently closed the round house switch, or if it was already closed, negligently failed to open it, thereby allowing and causing the switch engine when put in motion by the engineer in charge of same, to run by and pass the round house track which it should have taken and onto the "dead track" where said engines were standing, as aforesaid, and colliding with same with great violence and causing

the injury to said Peterson, as aforesaid. Plaintiffs allege that said switchman was wholly ignorant and inexperienced in the business and work of throwing switches and knew nothing whatever about the duties of said employment, and was incompetent to perform such work and service in a safe and careful manner and that the incompetency of said switchman to perform such service was well known to the defendant Rock Island Company and its officers and agents at the time they employed and put him at said dangerous work in said yards, as aforesaid, or might have been known to them by the use of ordinary care. That the said Peterson was wholly unacquainted with said switchman and did not know that he was an ignorant, incompetent, inexperienced, reckless, careless and dangerous servant and unfitted for the work that he was attempting to perform; and did not know that he was an inexperienced incompetent and dangerous employé and wholly unfitted for said work, but that said Peterson assumed that said switchman and other co-employés at work with said switch engine, were careful, competent and safe co-employés, and acting upon such assumption as he had a right to do, did not anticipate or expect any danger or injury from the source from which his fatal injury came, as aforesaid. Plaintiffs allege
7 that through the culpable and gross negligence of the defendant as herein alleged and set out, said Peterson was injured and killed by the defendant, as aforesaid, to the damage of plaintiffs in the sum of Thirty thousand ($30,000.00) Dollars, and for which they sue and pray judgment.

Plaintiffs further allege that the statute laws of the State of Arkansas are now and were in force under and by virtue of an act of Congress in the Indian Territory, where said injury and death occurred, and that under the laws plaintiffs are given a right of action against the defendant for the wrong and injuries herein complained of, the same as under the laws of the state of Texas, and that under said laws the recovery for such wrongs and injuries is for the exclusive use and benefit of the surviving widow and next of kin of the deceased, and which recovery is apportioned among the persons entitled to receive the same according to the descent and distribution of personal property under the laws of said state, which plaintiff alleges is one-third thereof to the widow and the remainder to the child or children of the deceased; and that the said Augusta is entitled to one-third of whatever may be recovered in this action, and her minor child, Ida, to the remaining two-thirds of said recovery, she, the said Ida, being the only child of said John Peterson and was born on the 26th day of October 1903, five days after the death of said Peterson. Wherefore, premises considered, plaintiffs sue and pray for citation against said defendant in terms of the law and that upon final hearing they have judgment against the said defendant for their damages and interest thereon, and all costs of suit, and for all other and proper relief both general and special.

SAM J. HUNTER,
STEWART & TEMPLETON,
Attorneys for Plaintiffs.

8 *Statute Laws of Arkansas.*

As Copied from Mansfield's Digest.

By Dorset Carter.

As Found in His Annotated Statutes of the Indian Territory, —, 1899.

SEC. 3434 (M. D. 5225). Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or company or corporation which would have been liable if death had no- ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount, in law, to a felony. (S. & H. 5910.)

SEC. 3431 (M. D. 5226). Every such action shall be brought by, and in the name of the personal representatives of such deceased person, and if there be no personal representatives then the same may be brought by the heirs at law of such deceased person; and the amount recovered in every such action shall be for the exclusive benefit of the widow and next of kin of such deceased person, and shall be distributed to such widow and next of kin, in the proportion provided by law in relation to the distribution of personal property left by persons dying intestate; and, in every such action, the jury may give such damages as they shall deem a fair and just compensation, with reference to the pecuniary injuries resulting from such death to the wife and next of kin of such deceased person. Provided, that every such action shall be commenced within two years after the death of such person. (Act March 6, 1883; S. & H. 5912.)

SEC. 1879 (M. D. 2591). A widow shall be entitled, as part of her dower, absolutely and in her own right, one-third part of the personal estate, including cash on hand, bonds, bills, notes, book accounts and evidences of debt whereof the husband died seized or possessed. (Act Feb. 21, 1859, Sec. 1; Act March 8, 1867; S. & H. 2541; G. D. 2230.)

SEC. 1820 (M. D. 2522). When any person shall die, having title to any real estate of inheritance, or personal estate, not disposed of, nor otherwise limited by marriage settlement, and shall be intestate as to such estate, it shall descend and be distributed in parceny, to his kindred male and female, subject to the payment of his
9 debts and the widow's dower, in the following manner:

First: To children, or their descendants, in equal parts.

Second: If there be no children, then to the father, then to the mother; if no mother, then to the brothers and sisters, or their descendants in equal parts.

Third: If there be no children, nor their descendants, father, mother, brothers or sisters, nor their descendants, then to the grand-

father, grandmother, uncles and aunts and their descendants in equal parts, and so on in other cases, without end, passing to the nearest lineal ancestor and their children and their descendants in equal parts. (S. & H. 2470; G. D. 2162.)

SEC. 1821 (M. D. 2523). Posthumous children of the intestate shall inherit in like manner as if born in the lifetime of the intestate, but no right of inheritance shall accrue to any person other than the children of the intestate, unless they be born at the time of the intestate's death. (S. & H. 2471; G. D. 2163.)

This is all the statutory law of Arkansas bearing on the subject matter of this case.

The foregoing has the following endorsement, to-wit:

No. 320. Augusta A. Peterson *et al. vs.* Chicago, Rock Island & Pacific Railway Company. Plaintiff's original petition. Filed 30 day of July 1904. J. H. Finks, Clerk By J. B. Finks, Deputy.

10 In the United States Circuit Court for the Northern District of Texas, at Fort Worth.

The President of the United States of America to the Marshal of the Northern District of Texas, Greeting:

You are hereby commanded to Summon The Chicago, Rock Island & Pacific Ry. Co., by serving S. B. Hovey, Vice President & General Manager of Chicago, Rock Island & Gulf Ry. and General Manager and Local Agent of the Chicago, Rock Island & Pacific Railway Company, a resident Citizen of the County of Tarrant, if to be found in your District, to be and appear before the Honorable Circuit Court of the United States, at the next regular Term thereof, to be holden for the Fifth Judicial Circuit and Northern District of Texas at the Court Room thereof, in the City of Fort Worth, on the first Monday, it being the 7th day of November next, to answer the Petition in Case No. 320, filed on the 30th day of July, 1904, of Augusta A. Peterson and Ida Peterson, a minor, Plaintiffs against the Chicago, Rock Island & Pacific Railway Company, Defendant.

The nature of the Plaintiff's demand is as follows, to-wit: Suit for damages in the sum of $30,000.00 for the death of pl'ff's husband, John Peterson, said death alleged to be the result of an accident to said Peterson while he was in def't's employ as locomotive engineer and in def't's yards at Chickasha, I. T. and was caused by one of Peterson's co-employés negligently and carelessly running an engine upon said dead track on which were 2 engines, on one of which Peterson was working, causing the engines to collide and crushing Peterson between them, bruising him in such manner that he died; and for costs of suit, etc. Pltff. further represents that the Chicago, Rock Island & Pacific and Chicago, Rock Island & Gulf Railways while separately incorporated are substantially one company and owned and operated as one company, as is fully shown by Plaintiff's original petition, a copy of which duly certified is herewith accompanying and here referred to for a more distinct statement of the cause of action herein, of which you will serve the said Chicago,

Rock Island & Pacific Ry. Co. defendant, by serving S. B. Hovey, Vice president and General Manager of the Chicago, Rock Island & Gulf Ry. Co. and General Manager and Local Agent of the Chicago, Rock Island & Pacific Ry. Co., also with the accompanying certified copy of said petition; and with a true copy of this Writ.

Herein fail not, and due return of this Writ make, on or before the 7th day of Nov'r next, showing how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the Seal of said Circuit Court, at Fort Worth, Texas, this 1st day of August in the year of our Lord 1904, and of American Independence the 129th year.

[SEAL.]

J. H. FINKS,
Clerk of said Circuit Court,
By J. B. FINKS,
Deputy Clerk.

11 [Endorsed:] Marshal's Docket No. 1329. E. No. 320 U. S. Circuit Court, Northern District of Texas, at Fort Worth. Augusta A. Peterson, *et al. vs.* C. R. I. & P. Ry. Co. Citation to S. B. Hovey, V. P. & G. M. &c. &c. Tarrant County. Issued Aug. 1, 1904. J. H. Finks, Clerk. By J. B. Finks, Deputy. Returned and filed Aug. 3 1904 J. H. Finks, Clerk. By J. B. Finks, Deputy. M. O. D.

Marshal's Return.

Received this Writ on the second day of August, 1904, and I executed the same on the second day of Aug. 1904, by delivering to the within named defendant The C. R. I. & P. Ry. Co., by serving S. B. Hovey, Vice president and General Manager of Chicago, Rock Island and Gulf Ry. Co., and General Manager and Local Agent of the Chicago, Rock Island and Pacific Ry. Company, at Fort Worth, Tarrant Co., Texas, of said defendant Company in person, a certified copy of the Petition in this case; also a true copy of this Writ.

GEO. H. GREEN,
U. S. Marshal, N. D. T.,
By W. O. THOMAS, *Deputy.*

Fee	$2.00
Mileage	
Actual Expense	
Total	$2.00

12 In the United States Circuit Court for the Northern District of Texas, at Fort Worth.

The President of the United States of America to the Marshal of the Northern District of Texas, Greeting:

You are hereby commanded to Summon The Chicago, Rock Island & Pacific Ry. Co. by serving F. E. Merrell, local agent in Tarrant

county, Texas, for the Chicago, Rock Island & Pacific Ry. Co. and for Chicago, Rock Island & Gulf Ry. Co. said F. E. Merrell being a resident Citizen of the County of Tarrant, if to be found in your District, to be and appear before the Honorable Circuit Court of the United States, at the next regular Term thereof, to be holden for the Fifth Judicial Circuit and Northern District of Texas at the Court Room thereof, in the City of Fort Worth, on the first Monday, it being the 7th day of November next, to answer the Petition in Case No. 320, filed on the 30th day of July, 1904, of Augusta A. Peterson and Ida Peterson, a minor, Plaintiffs against the Chicago, Rock Island & Pacific Railway Company, Defendant.

The nature of the Plaintiff's demand is as follows, to wit: Suit for damages in sum of $30,000.00 for the death of pl'ff's husband, John Peterson, said death alleged to be the result of an accident to said Peterson while he was in def't's employ as locomotive engineer and in def't's yards at Chickasha, I. T. and was caused by one of Peterson's co-employés negligently and carelessly running an engine upon a dead track on which were 2 engines, on one of which Peterson was working causing the engines to collide and crushing him between them, bruising him in such manner that he died; and for costs of suit etc. Pl't'ff further represents that the Chicago, Rock Island & Pacific Ry. and Chicago, Rock Island & Gulf Ry., while separately operated are substantially one company, and owned and operated as one company, as is fully shown by Plaintiff's original petition, a copy of which duly certified is herewith accompanying and here referred to for a more distinct statement of the cause of action herein, of which you will serve the said Chicago, Rock Island & Pacific Ry. Co., defendant, by serving F. E. Merrell, Local Agent for the Chicago, Rock Island & Pacific Ry. Co., and Chicago, Rock Island & Gulf Ry. Co. also with the accompanying certified copy of said petition; and with a true copy of this Writ.

Herein fail not, and due return of this Writ make, on or before the 7th day of Nov'r next, showing how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the Seal of said Circuit Court, at Fort Worth, Texas, this 1st day of August in the year of our Lord 1904, and of American Independence the 129 year.

[SEAL.]

J. H. FINKS,
Clerk of said Circuit Court,
By J. B. FINKS,
Deputy Clerk.

13 [Endorsed:] E. Marshal's Docket No. 1329 No. 320 U. S. Circuit Court, Northern District of Texas, at Fort Worth. Augusta A. Peterson *et al. vs.* C. R. I. & P. Ry. C. Citation to F. E. Merrell, Local Ag't &c. Tarrant County. Issued Aug. 1, 1904 J. H. Finks, Clerk. By J. B. Finks, Deputy. Returned and filed Aug. 3, 1904. J. H. Finks, Clerk. By J. B. Finks Deputy. M. O. D.

Marshal's Return.

Received this Writ on the second day of Aug. 1904, and I executed the same on the second day of Aug. 1904, by delivering to the within named defendant the C. R. I. & P. Ry. Co., by serving F. E. Merrell, local agent for the Chicago, Rock Island and Pacific Ry. and the Chicago, Rock Island and Gulf Ry. Co., at Fort Worth, Tarrant Co., Texas, of said defendant company, in person, a certified copy of the Petition in this case; also a true copy of this Writ.

GEO. H. GREEN,
U. S. Marshal, N. D. T.,
By W. O. THOMAS, *Deputy.*

Fee	$2.00
Mileage	
Actual Expense	
Total	$2.00

14 In the United States Circuit Court for the Northern District of Texas, at Fort Worth.

The President of the United States of America to the Marshal of the Northern District of Texas, Greeting:

You are hereby commanded to Summon The Chicago, Rock Island & Pacific Ry. Co. by serving M. E. Sebree, Trainmaster of the first division of the Chicago Rock Island & Gulf Ry. and Chicago, Rock Island & Pacific Ry. and local agent in Texas, said M. E. Sebree being a resident Citizen of the County of Tarrant, if to be found in your District, to be and appear before the Honorable Circuit Court of the United States, at the next regular Term thereof, to be holden for the Fifth Judicial Circuit and Northern District of Texas at the Court Room thereof, in the City of Fort Worth, on the first Monday, it being the 7th day of November next, to answer the Petition in Case No. 320, filed on the 30th day of July, 1904, of Augusta A. Peterson and Ida Peterson, a minor, Plaintiffs against the Chicago, Rock Island & Pacific Railway Company, Defendant.

The nature of the Plaintiff's demand is as follows, to wit: Suit for damages in sum of $30,000.00 for the death of pl't'ff's husband, John Peterson, said death alleged to be the result of an accident to said Peterson while he was in def't's employ as locomotive engineer and in def't's yards at Chickasha, I. T. and was caused by one of Peterson's co-employés negligently and carelessly running an engine upon a dead track on which were 2 engines, on one of which Peterson was working, causing the engines to collide and crushing him between them, bruising him in such manner that he died; and for costs of suit etc. Pl't'ff further represents that the Chicago, Rock Island & Pacific Ry. and Chicago, Rock Island & Gulf Ry., while separately incorporated are substantially one company, and owned and operated as one company, as is fully shown by Plaintiff's original petition, a

copy of which duly certified is herewith accompanying and here referred to for a more distinct statement of the cause of action herein, of which you will serve the said Chicago, Rock Island & Pacific Ry. Co., defendant, by serving M. E. Sebree, Trainmaster and Local Agent, etc., also with the accompanying certified copy of said petition; and with a true copy of this Writ.

Herein fail not, and due return of this Writ make, on or before the 7th day of Nov'r next, showing how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the Seal of said Circuit Court, at Fort Worth, Texas, this 1st day of August in the year of our Lord 1904, and of American Independence the 129 year.

[SEAL.]

J. H. FINKS,
Clerk of said Circuit Court,
By J. B. FINKS,
Deputy Clerk.

15 [Endorsed:] E. Marshal's Docket No. 1329 No. 320 U. S. Circuit Court, Northern District of Texas, at Fort Worth. Augusta A. Peterson *et al. vs.* C. R. I & P. Ry. Co. Citation to M. E. Sebree, Trainmaster &c. Tarrant County, Issued Aug. 1, 1904 J. H. Finks, Clerk. By J. B. Finks, Deputy. Returned and filed Aug. 3, 1904 J. H. Finks, Clerk. By J. B. Finks, Deputy. M. O. D.

Marshal's Return.

Received this Writ on the second day of August, 1904, and I executed the same on the second day of August, 1904, by delivering to the within named defendant The Chicago, R. I. & Pacific Ry. Co., by serving M. E. Sebree, Trainmaster of the first division of the Chicago, Rock Island & Gulf Ry. and Chicago, Rock Island and Pacific Ry. and local agent in Texas, in Fort Worth, Tarrant Co., Texas, of said defendant company, in person, a certified copy of the Petition in this case; also a true copy of this Writ.

GEO. H. GREEN,
U. S. Marshal, N. D. T.,
By W. O. THOMAS, *Deputy.*

Fee	$2.00
Mileage	
Actual Expense	
Total	$2.00

16 *Defendant's Motion to Quash Service.*

Filed November 8th, 1904.

In the Circuit Court of the U. S. for the Northern District of Texas, at Fort Worth.

AUGUSTA A. PETERSON
vs.
THE C., R. I. & P. RY. CO.

Now comes the defendant, The Chicago, Rock Island & Pacific Railway Company, and appearing in this case only for the purpose of filing motion to quash service, and declinging to enter an appearance for any other purpose, shows to the court as follows:

That S. B. Hovey, M. E. Sebree and F. E. Merrell have been served with citations in this case, citing The Chicago, Rock Island and Pacific Railway Company to appear and answer, and that no other person has been so served.

This defendant would show that none of these persons is or was at the time of such service either the president, vice president, secretary, or treasurer, or the general manager or local agent of the said defendant, and reference is hereby made to their affidavits to that effect on file in this case.

It is further shown that the defendant, The Chicago, Rock Island & Pacific Railway Company, is a foreign corporation, incorporated under the laws of Illinois and Iowa, and is not incorporated under the laws of Texas.

Wherefore, the said defendant moves that the service heretofore had be quashed and held of no avail.

N. H. LASSITER,
ROB'T HARRISON,
Attorneys for Defendant.

The foregoing has the following endorsement, to-wit:

No. 320. Augusta A. Peterson *et al vs.* The C. R. I. & P. Ry. Co. Defendant's motion to quash service. Filed 8th day of Nov. 1904. J. H. Finks, Clerk, By J. B. Finks, Deputy.

17 *Affidavit of S. B. Hovey.*

Filed November 8th, 1904.

THE STATE OF TEXAS, *County of Tarrant:*

Now comes S. B. Hovey, who being first duly sworn by me, says upon oath that he is the S. B. Hovey upon whom a citation was served on August 2nd, 1904, in the suit of Augusta A. Peterson against The Chicago, Rock Island & Pacific Railway Company, No. 320 in the Circuit Court of the United States for the Northern Dis-

trict of Texas; and he says upon oath that he is not, and was not at the time of the service of the said citation, nor at the time of the happening of the accident involved in the said suit, nor had he been at any time since, either the General Manager or Local Agent, or the President, Vice President, Secretary or Treasurer of the said The Chicago, Rock Island & Pacific Railway Company.

S. B. HOVEY.

Subscribed and sworn to before me by the said S. B. Hovey on this 5th day of November, 1904.

HODGE CRENSHAW,
[SEAL.] *Notary Public, Tarrant Co., Texas.*

The foregoing has the following endorsement, to-wit:
No. 320. A. Peterson *vs.* C. R. I. & P. Ry. Co. Affidavit of S. B. Hovey. Filed 8th day of Nov. 1904. J. H. Finks, Clerk, By J. B. Finks, Deputy.

18 *Affidavit of F. E. Merrill.*

Filed November 8th, 1904.

THE STATE OF TEXAS, *County of Tarrant:*

Now comes F. E. Merrill, who being duly sworn, says upon oath that he is the F. E. Merrill upon whom a citation was served on August 2nd, 1904, in the suit of Augusta A. Peterson against The Chicago, Rock Island & Pacific Railway Company, No. 320, in the Circuit Court of the United States for the Northern District of Texas; and he says upon oath that he was not at the time of the service of said citation, nor at the time of the happening of the accident involved in said suit, nor has he at any time since been the local agent, nor any character of agent, of the said The Chicago, Rock Island & Pacific Railway Company.

F. E. MERRILL.

Subscribed and sworn to before me by the said F. E. Merrill, on this 5th day of November 1904.

HODGE CRENSHAW,
[SEAL.] *Notary Public, Tarrant Co., Texas.*

The foregoing has the following endorsement, to-wit:
No. 320. A. Peterson *vs.* C. R. I. & P. Ry. Co. Affidavit of F. E. Merrill. Filed 8th day of Nov. 1904. J. H. Finks, Clerk, By J. B. Finks, Deputy.

19 *Affidavit of M. E. Sebree.*

Filed November 8th, 1904.

THE STATE OF TEXAS, *County of Tarrant:*

Now comes M. E. Sebree, who being by me duly sworn, says upon oath that he is the M. E. Sebree upon whom a citation was served on August 2nd, 1904, in the suit of Augusta A. Peterson against The Chicago, Rock Island & Pacific Railway Company, No. 320, in the Circuit Court of the United States for the Northern District of Texas; and he says upon oath that he was not at the time of the service of this citation upon him, nor at the time of the happening of the accident involved in this suit, nor has he been at any time since the President, Vice President, Secretary, Treasurer or General Manager, or the Local Agent within Texas of the defendant, The Chicago, Rock Island & Pacific Railway Company.

M. E. SEBREE.

Subscribed and sworn to by the said M. E. Sebree before me, this 5th day of November, 1904.

HODGE CRENSHAW,
[SEAL.] *Notary Public, Tarrant Co., Texas.*

The foregoing has the following endorsement, to-wit:
No. 320. A. Paterson *vs.* C. R. I. & P. Ry. Co. Affidavit of M. E. Sebree. Filed 8th day of Nov. 1904. J. H. Finks, Clerk, By J. B. Finks, Deputy.

20 *Application of Plaintiff for Service of Additional Process.*

Filed October 4th, 1905.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

No. 320.

AUGUSTA A. PETERSON
vs.
CHICAGO, ROCK ISLAND & PAC. RY. CO.

Now come Augusta A. Peterson and Ida Peterson, plaintiffs in the above styled and numbered cause, and show to the court that A. L. Thomas, who resides at number 508 East Belknap St., in the city of Fort Worth, Tarrant county, Texas, and within the Northern District of this Honorable Circuit Court of the United States in Texas, is a train conductor engaged in handling trains for and over the tracks of the Chicago, Rock Island & Gulf Railway Co. in the state of Texas, and the defendant, the Chicago, Rock Island & Pacific

Railway Co. beyond the limits of the state of Texas. That said Thomas is a train conductor as aforesaid, running upon and handling passenger trains for the said defendant the Chicago, Rock Island & Pac. Ry. Co. and does now and has been for many years condu-tor running and handling such trains between the city of Fort Worth, Tarrant county, Texas, and the city of Caldwell, Kansas, running over the tracks of said companies on both sides of the state line, as aforesaid, and is an agent and representative of the defendant company residing in the county of Tarrant and state of Texas, as aforesaid. And that V. N. Turpin, who resides in the city of Fort Worth, Tarrant county, Texas, and within said Northern District of said United States Circuit Court, as aforesaid, is a ticket agent engaged in the selling of tickets and the making of contracts for transportation for and on behalf of the defendant company and is now and has been for many years engaged in seeling tickets and transportation from the city of Fort Worth over the line of said Chicago, Rock Island & Gulf Ry. Co. within the state of Texas, and of the defendant Company beyond the state of Texas, and that each and both of said parties, the said A. L. Thomas and the said V. N. Turpin are agents and representatives of the defendant company residing within the county and state of Texas, as aforesaid, and upon each and both of whom these plaintiffs desire service of pro-
21 cess in addition to the service heretofore had in this case.

Wherefore, they pray that additional citation to defendant be issued herein to be served upon its agents and representatives whose names are hereinabove set out.

STEWART & TEMPLETON,
HUNTER & HUNTER,
Att'ys for Pl't'ff.

The foregoing has the following endorsement, to-wit:
No. 320. Augusta A. Peterson *et al. vs.* C. R. I. & Pac. Ry. Co. Application of plaintiff for service of additional process. Filed 4th day of Octo 1905. J. H. Finks, Clerk, By J. B. Finks, Deputy.

22 In the United States Circuit Court for the Northern District of Texas, at Fort Worth.

The President of the United States of America to the Marshal of the Northern District of Texas—Greeting:

You are hereby commanded to Summon The Chicago, Rock Island & Pacific Ry. Co., by serving A. L. Thomas, a conductor on said road, and V. N. Turpin, a ticket agent thereof, both agents and representatives of said Railway Co., resident Citizens of the County of Tarrant, if to be found in your District, to be and appear before the Honorable Circuit Court of the United States, at the next regular Term thereof, to be holden for the Fifth Judicial Circuit and Northern District of Texas at the Court Room thereof, in the City of Fort Worth, on the first Monday, it being the 6th day of November next, to answer the Petition in Case No. 320, filed

on the 30th day of July, 1904, of Augusta A. Peterson and Ida Peterson, a minor, Plaintiffs against the Chicago, Rock Island & Pacific Railway Company, Defendant.

The nature of the Plaintiffs' demand is as follows, to-wit: Suit for damages in the sum of $30,000.00 for the death of pltff.'s husband, John Peterson, said death alleged to be the result of an accident to said Peterson while he was in deft.'s employ as locomotive engineer and in deft.'s yards at Chickasha, I. T. and was caused by one of Peterson's co-employés negligently and carelessly running an engine upon a dead track on which were 2 engines, on one of which Peterson was working, causing the engines to collide and crushing Peterson between them, bruising him in such manner that he died; and for costs of suit, etc. Pltff. further represents that the Chicago, Rock Island & Pacific and Chicago, Rock Island & Gulf Rys. while separately incorporated are substantially one company, and owned and operated as one company, as is fully shown by Plaintiffs' original petition, a copy of which duly certified is herewith accompanying and here referred to for a more distinct statement of the cause of action herein, of which you will serve the said Chicago, Rock Island & Pacific Ry. Co., by serving A. L. Thomas, a conductor on said road, and V. N. Turpin, a ticket agent thereof, both agents and representatives of said Ry. Co., also with the accompanying certified copy of said petition; and with a true copy of this Writ.

Herein fail not, and due return of this Writ make, on or before the 6th day of Nov'r next, showing how you have executed the same.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the Seal of said Circuit Court, at Fort Worth, Texas, this 5th day of October in the year of our Lord 1905, and of American Independence the 130th year.

[SEAL.] J. H. FINKS,
Clerk of Said Circuit Court,
By J. B. FINKS,
Deputy Clerk.

23 [Endorsed:] Marshal's Docket No. 1528. No. —. U. S. Circuit Court, Northern District of Texas, at Forth Worth. Augusta A. Peterson *et al. vs.* C. R. I. & P. Ry. Co. Citation to A. L. Thomas, and V. N. Turpin, Tarrant County. Issued Oct. 5 1905. J. H. Finks, Clerk, By J. B. Finks, Deputy. Returned and filed Oct. 7 1905. J. H. Finks, Clerk, By J. B. Finks, Deputy.

Marshal's Return.

Received this Writ on the 6th day of October, 1905 and I executed the same on the 6th day of October, 1905, by delivering to the within named defendants, A. L. Thomas and V. N. Turpin in Fort Worth, Tarrant Co., Texas, in person, a certified copy of the Petition in this case; also a true copy of this Writ.

GEO. H. GREEN,
U. S. Marshal, N. D. T.,
By W. O. THOMAS, *Deputy.*

Fee, 2 citations	$4.00
Mileage, St. car fare	15
Actual Expense	
Total	$4.10

24 *Supplemental Motion to Quash Service.*

Filed November 17th, 1905.

In the U. S. Circuit Court for the Northern District of Texas, at Fort Worth.

AUGUSTA A. PETERSON
vs.
THE C., R. I & P. RY. CO.

Now comes The Chicago, Rock Island & Pacific Railway Company, and appearing for this purpose solely, files this its supplemental motion to quash the service in this case, it being agreed by counsel that the two motions may be considered as an amended motion, and for ground of such motion shows to the court that V. N. Turpin, upon whom a citation was served in this suit, citing the defendant to appear is not and was not at the time of service of the citation, nor at any time since the institution of this suit, an agent or employé of any kind or character of this defendant, and respectfuliy calls the court's attention to his affidavit to that effect, which is attached to and is made a part of this motion.

Defendant further shows to the court that A. L. Thomas, upon whom a citation was served, summoning the defendant to appear and answer, is not and was not at the time of the service of citation, nor at any other time since the filing of this suit, an agent or employé of any kind of this defendant in Texas, as will appear from his affidavit, which is attached hereto and made a part of this motion.

It is respectfully shown that the service of citation on these two parties is an attempt to obtain service on this defendant, in pursuance of a recently enacted Texas statute providing for service on foreign corporations by serving a citation on agents of the domestic corporation, selling tickets over both lines, and on certain train men having charge of a train running over both lines.

It is respectfully shown that the service contemplated by that statute is insufficient to sustain a personal judgment, in that it is not personal service on the defendant, as it provides for service of citation on persons not employed by the defendant, and who are not in fact agents of the defendant.

Wherefore the defendant prays that the service of citation on the different persons heretofore served be held as insufficient, and that the return of the service be quashed, and this defendant be not required to answer herein.

N. H. LASSITER,
ROBERT HARRISON,
Attorneys for Defendant.

25 The foregoing has the following endorsement, to-wit:—
No. 320 L. Augusta A. Peterson *et al. vs.* C. R. I. & P. Ry. Co. Motion to quash service. Filed 17th day of Nov. 1905. J. H. Finks, Clerk, By J. B. Finks, Deputy.

26 *Affidavit of A. L. Thomas.*

Filed November 17th, 1905.

THE STATE OF TEXAS, *County of Tarrant:*

Now comes A. L. Thomas, and says upon oath, that he is the A. L. Thomas upon whom citation was served in the suit of Augusta A. Peterson *vs.* The Chicago, Rock Island & Pacific Railway Company, on the — day of ——, 1905; and he says upon oath that he is not and was not on the date of service of citation, and has not been at any time since the institution of this suit an agent or employé of The Chicago, Rock Island & Pacific Railway Company, except as stated below:

That he is and has been for a number of years a passenger conductor, residing at Fort Worth, Texas, and running over the line of road of The Chicago, Rock Island & Gulf Railway Company and of The Chicago, Rock Island & Pacific Railway Company, between Fort Worth, Texas, and Caldwell, Kansas. That he is employed by each company while running on its line of road, and paid by each company for the service rendered it. That he runs from Fort Worth, Texas, to the Texas State line over the line of The Chicago, Rock Island & Gulf Railway Company and that from the Texas State line to Caldwell, Kansas, he runs over the line of The Chicago, Rock Island & Pacific Railway Company.

A. L. THOMAS.

Subscribed and sworn to before me, this the 17th day of November A. D. 1905.

E. H. CRENSHAW, JR.,
[SEAL.] *Notary Public, Tarrant Co., Tex.*

The foregoing has the following endorsement, to-wit:—
No. 320 L. Augusta A. Peterson *et al. vs.* C. R. I. & P. Ry. Co. Affidavit of A. L. Thomas. Filed 17th day of Nov. 1905. J. H. Finks, Clerk, By J. B. Finks, Deputy.

27 *Affidavit of V. N. Turpin.*

Filed November 17th, 1905.

THE STATE OF TEXAS, *County of Tarrant:*

Now comes V. N. Turpin, and says upon oath that he is the V. N. Turpin upon whom citation was served on the — day of ——, 190-, in the suit of Augusta A. Peterson *vs.* The C. R. I. &

P. Ry Co.; and he says upon oath that he is not, and was not at the time of the service of citation, nor has he been at any time since the institution of this suit, an agent or employé of any kind or character for The Chicago, Rock Island & Pacific Railway Company further than as is disclosed below:

That he is and has been for a long time the City Ticket agent of The Chicago, Rock Island & Gulf Railway Company, in Fort Worth, Texas, and that in the performance of his duties as such he has sold and customarily sells tickets good for passage over the line of The Chicago, Rock Island and Gulf Railway Company, and any other connecting line which the purchaser desires to travel over, and that he has thus sold tickets over The Chicago, Rock Island & Gulf and The Chicago, Rock Island & Pacific Railway Company's lines.

V. N. TURPIN.

Subscribed and sworn to before me, this 17th day of November A. D. 1905.

E. H. CRENSHAW, JR.,
[SEAL.] *Notary Public, Tarrant Co., Tex.*

The foregoing has the following endorsement, to-wit:—
No. 320 Law. Augusta A. Peterson *vs.* Chicago, Rock Island & Pacific Ry. Co. Affidavit of V. N. Turpin. Filed 17th day of Nov. 1905. J. H. Finks, Clerk, By J. B. Finks, Deputy.

28 *Order of Court Sustaining Motion to Quash Service.*

Entered November 21st, 1905.

From the Minutes of the Circuit Court of the United States for the Northern District of Texas, at Fort Worth, November Term, 1905.

No. 320.

AUGUSTA A. PETERSON ET AL.
vs.
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.

NOVEMBER 21ST, 1905.

This cause coming on to be heard upon the motion of the defendant, the Chicago, Rock Island & Pacific Railway Company, to quash the service of citation herein, came the plaintiffs and the defendant by their respective attorneys and announced ready for trial on said issue; and the court having heard the evidence in support of and against said motion is of opinion that the law is for the defendant and that said motion ought to be sustained.

It is therefore ordered and adjudged by the court that said motion be, and the same is hereby sustained, and that the service of citation herein be and the same is hereby quashed and set at naught and that the cost of said motion be taxed against the plaintiffs.

And it appearing to the court that this court has no jurisdiction over the defendant herein, it is further considered, and so ordered that this cause be and it is hereby dismissed for want of jurisdiction over said defendant, and that said defendant recover of plaintiffs all costs in this behalf expended, for which let execution issue.

To which action of the court in sustaining said motion and quashing the service of citation in this cause and in dismissing said cause and taxing the costs thereof against plaintiffs, the plaintiffs then and there in open court excepted.

From Minute Book 3, page 12.

29 *Plaintiffs' Bill of Exceptions.*

December 27th, 1905.

In the United States Circuit Court for the Northern District of Texas, at Fort Worth.

No. 320.

AUGUSTA A. PETERSON ET AL.
vs.
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY CO.

Action at Law.

This is an action at law to recover damages occasioned to the plaintiffs by the death of John Peterson, the husband of the plaintiff Augusta A. Peterson and the father of the plaintiff, Ida Peterson, and whose death is alleged to have resulted from the negligence of the defendant while the said decedent was in the services of defendant as an employé of said Company.

Be it remembered, that on the 21st day of November 1905, the above entitled cause came on for trial before the above entitled court at a regular term thereof upon the defendant's motion and supplemental motion to quash the service of citation herein. The Honorable E. R. Meek, Judge presiding. The plaintiffs Augusta A. Peterson and Ida M. Peterson appeared by their attorneys of record, Stewart & Templeton, and the defendant, The Chicago, Rock Island and Pacific Railway Company appeared by its attorneys of record, N. H. Lassiter and Robert Harrison, and the following proceedings were had:

The said defendant by its said attorneys presented to the court its said original and supplemental motions to quash the service of citation herein for want of jurisdiction over said defendant which motions were as follows, to-wit:

In the Circuit Court of the U. S. for the Northern District of Texas, at Fort Worth.

AUGUSTA A. PETERSON
vs.
THE C., R. I. & P. RY. CO.

Now comes the defendant, The Chicago, Rock Island & Pacific Railway Company, an- appearing in this case only for the purpose of filing motion to quash service, and declining to enter an appearance for any other purpose, shows to the court as follows:

That S. B. Hovey, M. E. Sebree and F. E. Merrill have been served with citations in this case, citing The Chicago, Rock Island and Pacific Railway Company to appear and answer, and that no other person has been served.

This defendant would show that none of these persons is or was at the time of such service either the president, vice president, secretary or treasurer, or the general manager or local agent of the said defendant, and reference is hereby made to their affidavits to that effect on file in this case.

It is further shows that the defendant, The Chicago, Rock Island and Pacific Railway Company is a foreign corporation, incorporated under the laws od Illinois and Iowa, and is not incorporated under the laws of Texas.

Wherefore, the said defendant moves that the service heretofore had be quashed and held of no avail.

N. H. LASSITER,
ROB'T HARRISON,
Attorneys for Defendant.

Filed 8th day of November 1904.

In the U. S. Circuit Court for the Northern District of Texas, at Fort Worth.

AUGUSTA A. PETERSON
vs.
C., R. I. & P. RY. CO.

Now comes The Chicago, Rock Island & Pacific Railway Company and appearing for this purpose solely, files this its supplemental motion to quash the service in this case, it being agreed by counsel that the two motions may be considered as an amended motion, and for ground of such motion shows to the court that V. N. Turpin, upon whom a citation was served in this suit, citing the defendant to appear, is not and was not at the time of service of the citation, nor at any time since the institution of this suit, an agent or employé of any kind or character of this defendant, and respectfully calls the court's attention to his affidavit to that effect, which is attached to and is made a part of this motion. Defendant further shows the

court that A. L. Thomas, upon whom a citation was served, summoning the defendant to appear and answer, is not and was
31 not at the time of the service of the citation, nor at any other time since the filing of this suit, an agent or employé of any kind of this defendant in Texas, *and* will appear from his affidavit, which is attached hereto and made a part of this motion.

It is respectfully shows that the service of citation on these two parties is an attempt to obtain service on this defendant in pursuance of a recently enacted Texas statute, providing for service on foreign corporations by serving a citation on agent of the domestic corporation, selling tickets over both lines, and on certain train men having charge of a train running over both lines.

It is respectfully shown that the service contemplated by that statute is insufficient to sustain a personal judgment, in that it is not personal service on the defendant, as it provides for service of citation on persons not employed by the defendant, and who are not in fact agents of the defendant.

Wherefore the defendant prays that the service of citation on the different persons heretofore served be held as insufficient and that the return of the service be quashed, and this defendant be not required to answer herein.

N. H. LASSITER,
ROBERT HARRISON,
Attorneys for Defendants.

Filed 17th day of November 1905.

Said motion being resisted by said plaintiffs, the following agreed statement *and* facts and other evidence hereinafter set out was introduced upon the hearing of said motions, to-wit:

Agreement.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

AUGUSTA A. PETERSON ET AL.
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

To said Honorable Court:

Come now Augusta A. Peterson *et al.*, plaintiff-, by their
32 attorneys, Hunter & Flood and Stewart & Templeton, and comes also The Chicago, Rock Island & Pacific Railway Company, defendant herein, represented by its attorneys N. H. Lassiter and Robert Harrison, and agree as follows:

The Chicago, Rock Island and Pacific Railway Company is a consolidated corporation, chartered under the laws of Illinois and Iowa. It has been an existing railroad corporation for over twenty years. In June of the year 1892 and for some years prior to that time the said railway Company owned and operated a line of railway

from the city of Chicago in a southwesterly direction through the states of Illinois, Iowa, Missouri and Kansas to Minco, Indian Territory. During the year 1892 this company extended its line from Minco, Indian Territory, in a southerly direction to the north boundary line of Texas in Montague county.

The Chicago, Rock Island and Texas Railway Company was a corporation organized under the laws of Texas on the 15th day of July 1892. It had an authorized capital stock of three million dollars, in shares of one hundred dollars each, of which seven hundred and fifty four shares were subscribed for at the time of its organization. Below is a list of the names of the stockholders and the number of shares of capital stock of this company subscribed for by each, at its original organization:

Name.	Residence.	Shares.
M. A. Low	Topeka, Kansas	745.
W. W. Phelps	" "	1.
C. F. Jilson	" "	1.
A. G. Hastick	" "	1.
W. F. Evans	" "	1.
C. H. Thompson	Hennessey, O. T.	1.
J. T. Harris	Belcher, Texas	1.
H. F. Weber	Bowie, Texas	1.
Z. T. Lowrie	" "	1.
J. H. Matthews	" "	1.
Total		754

At the time this company was organized, M. A. Low was one of the General Attorneys of the Chicago, Rock Island and Pacific Railway Company, and had been for a number of years; W. F. Evans was his Assistant and had been for a number of years; C. F. Jilson was Assistant Treasurer of said company at Topeka, Kansas, and had been for a number of years; C. H. Thompson had been employed in securing right-of-way for the same company. None of the
33 other stockholders had ever been connected in any capacity with The Chicago, Rock Island and Pacific Railway Company.

Under the charter of The Chicago, Rock Island and Texas Railway Company, it was authorized to construct a line of road from the north boundary line of Texas at a point in Montague county in a southerly direction through Montague, Wise and Parker counties; the charter being afterward amended, authorized the construction into Tarrant county. This charter authorized the issuance of first mortgage bonds amounting to fifteen thousand dollars per mile for construction and not exceeding five thousand per mile for equipment.

When the Chicago, Rock Island and Pacific Railway Company constructed its line to a point near the north bank of Red River, north of Montague county, construction work stopped for a period of time. The Chicago, Rock Island & Texas Railway Company began the construction of its line at the north line of the state in Montague county some time after The Chicago, Rock Island and Pacific Rail-

way Company stopped work at a point north of Red River. After construction work began on The Chicago Rock Island and Texas Railway Company south of Red River, The Chicago Rock Island and Pacific Railway Company constructed its line from the point where work had stopped north of Red River, to a connection with The Chicago, Rock Island & Texas Railway *Railway* Company at the State line. The Texas Company finished the construction of its line into Fort Worth in the latter part of 1893. Some of the same contractors who constructed The Chicago, Rock Island and Pacific Railway from Minco south to Red River also took contracts for work on the Texas line.

On the 2nd day of January 1893, after The Chicago, Rock Island & Texas Railway Company had constructed and was operating its line as far south as Bowie, Texas, it entered into an agreement with The Chicago, Rock Island & Pacific Railway Company, a true copy of which is hereto attached and marked "Exhibit A" for identification. This agreement went into effect immediately after it was executed, and was acted upon and observed by said companies until the 14th day of April 1903, when the same was canceled under authority of the Board of Directors of each Company by a written agreement, a true copy of which is hereto attached, marked "Exhibit B" for identification.

After The Chicago, Rock Island and Texas Railway Company had constructed its line, it issued first mortgage bonds to the ex-
34 tent of fifteen thousand dollars per mile thereon, and these bonds were purchased by The Chicago, Rock Island and Pacific Railway Company, for which it paid the Texas line one hundred cents on the dollar. The Chicago, Rock Island & Texas line cost a large sum of money in excess of the amounts for which it issued bonds, which additional cost was paid by application of money subscribed by stockholders and by borrowing from The Chicago, Rock Island & Pacific Railway Company, which money so borrowed has long since been returned with interest.

At the time The Chicago, Rock Island and Pacific Railway Company constructed its line to Red River there was no town or city at that particular point, but there were towns and cities south, east and west of there in the state of Texas, and a railroad line, being a part of the Missouri, Kansas & Texas Railway of Texas, nine miles south of that point.

When The Chicago, Rock Island & Texas Railway Company was first organized its general offices were located at Bowie, Montague county, Texas, and remained there for some time, until the charter was amended, removing them to Fort Worth. The first general officers elected by The Chicago, Rock Island & Texas Railway Company, and their residences, were as follows: M. A. Low, Topeka, Kansas, President; J. C. McCabe, Bowie, Texas, General Freight Agent; and H. F. Weber, Bowie, Texas, Vice-President, Superintendent, Secretary and Treasurer. All these men, prior to the time they were elected officials of The Chicago, Rock Island and Texas Railway Company had been employed in some capacity by The Chicago, Rock Island and Pacific Railway Company. In 1893 S. B. Hovey was

elected Vice-President of the Texas company and remained the Vice-President and Superintendent of The Chicago, Rock Island & Texas Railway Company from that date until it was sold out under an Act of the Legislature in 1903. Mr. M. E. Sebree, who was served with citation in this case, was for a number of years and until the date of its sale, Trainmaster of The Chicago, Rock Island and Texas Railway Company and Assistant Trainmaster of The Chicago, Rock Island & Pacific Railway Company, with jurisdiction on that line up to Chickasha, Indian Territory. Prior to the time he was employed by The Chicago, Rock Island & Texas Railway Company he had been employed by The Chicago, Rock Island & Pacific Railway Company as brakeman, conductor, etc. M. A. Low of Topeka, Kansas, remained the President of The Chicago, Rock Island & Texas Railway Company from its organization until the 8 day of Nov. 1900, during all of which time he was one of the General Attorneys of The Chicago, Rock Island & Pacific Railway Company.

The Chicago, Rock Island & Texas Railway Company never issued or sold any equipment bonds, but before it was sold out under special act of the Legislature to The Chicago, Rock Island and Gulf Railway Company, it had purchased and was the owner of between one thousand and twelve hundred freight cars of various kinds. During the time it had no equipment of its own, it rented rolling stock from various railway companies, but principally from The Chicago, Rock Island and Pacific Railway Company, and paid therefor prices prevailing between other lines of railway in the state of Texas.

After The Chicago, Rock Island and Texas Railway Company constructed its line into Fort Worth from Bowie and after the execution of the contract between it and The Chicago, Rock Island & Pacific Railway Company, of date January 2nd, 1893, most of the passenger and freight trains running over its line from Red River to Fort Worth and from Fort Worth to Red River, were operated beyond its lines as the trains of The Chicago, Rock Island & Pacific Railway Company. The employés operating these trains were under the control of and paid by The Chicago, Rock Island & Texas Railway Company while working on its line, and they were also under the control of and paid by The Chicago, Rock Island & Pacific Railway Company while on its line. The equipment in the various trains went as far north as the business justified, some of the passenger equipment going as far as Chicago and some to Kansas City, while the freight equipment stopped at points beginning at Chickasha and from there north wherever the freight was destined. The passenger equipment coming south stopped at Fort Worth and the freight equipment, where the freight was handled in car load lots, went to destination, wherever that might be.

Whenever necessary the Texas Company would operate a local train to handle freight between Fort Worth and Red River but as a general rule the through service maintained took care of this business. It operated a local freight and passenger train between Bridgeport and Jacksboro and afterward to Graham from the time that branch was built until it was sold out, which was several years. On the through freight trains the run made by the crews was from

Fort Worth to Chickasha and on the through passenger train the run made by the crews was from Fort Worth to Caldwell,
36 Kansas, these crews being handled and paid as above set forth. Outside the Pullman cars, which were in each passenger train, nearly all the passenger equipment used by The Chicago, Rock Island & Texas Railway Company belonged to The Chicago, Rock Island & Pacific Railway Company for which it paid rental as provided for under the terms of the contract herein first referred to.

Defendant's witnesses will testify that the Texas Company paid no part of the cost of operating the Chicago, Rock Island & Pacific Railway, nor did the Pacific Company pay any part of the cost of the operation of The Chicago, Rock Island & Texas Railway, nor did either of them participate in the earnings of the other. The relationship between the companies is fully disclosed by the terms of the contract dated January 2nd, 1893, which was observed up to the time of its cancellation.

The passenger conductors, brakemen and train guards wear regular train uniforms and on the lapel of the coat are the words "Rock Island," and on the cap is the word "Conductor," "Brakeman" or "Porter." Any member of these train crews, while working on the line of the Texas Company may be discharged by the proper officer of that company; and while working on the line of the Pacific Company may be discharged by the proper officer of that company. Either company of course employs additional men when needed.

At the time the contract of January 2nd, 1893, was canceled The Chicago, Rock Island & Texas Railway Company was operating about an hundred and forty miles of road, and The Chicago, Rock Island & Pacific was operating about three thousand three hundred miles. For a considerable time after The Chicago, Rock Island & Texas Railway Company was built into Fort Worth it employed and maintained at its Fort Worth office a train dispatcher who gave orders for the movement of trains over its line, but as a matter of economy this was abolished, and the Texas Company paid a part of the salary of the train dispatcher located at Chickasha to give orders for the movement of trains over its rails.

On the 22nd day of September, 1903, The Chicago, Rock Island & Texas Railway Company, under authority of a special act of the Legislature known as Senate Bill No. 161, was purchased and absorbed by The Chicago, Rock Island & Gulf Railway Company, and since that time has ceased to exist as a railroad or to do any business as such.

37 At the time the Gulf Company purchased the Texas Company it had constructed and was operating a line of road from Fort Worth in Tarrant county to Dallas in Dallas county. The Chicago, Rock Island & Gulf Railway Company now owns and operates three hundred and eighty six miles of road, all of which is located inside the state of Texas. It does not own any railroad outside the state of Texas. It owns at the present time about sixteen hundred cars, including ballast, refrigerator and cattle cars, twenty locomotives, and eight cabooses, but does not own any passenger

equipment other than the Pullman cars which are used in each of its passenger trains, it rents its passenger equipment from The Chicago, Rock Island & Pacific Railway Company, and pays therefor current rental charged by connecting lines in Texas. The train crews on both the through passenger and freight trains are handled in the same way that they were when the line into Fort Worth was operated by The Chicago, Rock Island & Texas Railway Company, but The Chicago, Rock Island & Gulf Railway Company is now operating in many places local trains between local points in Texas.

The following is a list of stockholders and the amount of stock of The Chicago, Rock Island & Gulf Railway Company owned by each:

Wm. Wesley Johnson	3850
S. B. Hovey	1
N. H. Lassiter	1
J. C. McCabe	1
W. G. Newby	1
H. C. Holloway	1
J. B. Wilson	1
W. B. Leeds	1
B. L. Winchell	1
Robert Mather	1
H. B. Low	1
Total	3860

Mr. Wm. Wesley Johnson is a resident of New York, N. Y.; Messrs. S. B. Hovey, N. H. Lassiter, J. C. McCabe, W. G. Newby and H. C. Holloway are residents of Fort Worth, Texas; Mr. J. B. Wilson is a resident of Dallas, Texas; Messrs. W. B. Leeds, B. L. Winchell and Robert Mather are residents of Chicago, Illinois; Mr. H. B. Low is a resident of El Reno, Oklahoma.

The Chicago, Rock Island & Gulf Railway Company is operating under a lease that part of the line of The Chicago, Rock Island & Pacific Railway Company which begins at the north boundary line of the state of Texas, extending northward to the town of Terral, Indian Territory, a distance of about 1 1/6 miles.

38 Blank passes, properly signed by different railroads, including the Chicago, Rock Island & Pacific, Texas & Pacific, Houston & Texas Central and other lines, are sometimes placed with S. B. Hovey, and when so placed he has the permission of such line to fill in the names of parties and countersign the pass, and when so countersigned such pass is recognized by the line over which it is issued. The local ticket agents of The Chicago, Rock Island & Gulf Railway Company sell coupon tickets over The Chicago, Rock Island & Pacific Railway Company's line and nearly all other lines in the United States, which tickets are duly honored by the respective roads over which they read. The Chicago, Rock Island & Gulf Railway Company operates only one passenger train each way daily between Fort Worth and Dallas, while it operates two trains each way from Fort Worth north. It operates also only

a local freight service between Fort Worth and Dallas, but no through freight service. Proper officials of The Chicago, Rock Island & Gulf Railway Company and of The Chicago, Rock Island & Pacific Railway Company exchange reports with each other as to the amount of exchange business done.

No dividends were ever paid on the stock of The Chicago, Rock Island & Texas Railway Company, and none have been paid on that of The Chicago, Rock Island & Gulf Railway Company; the net earnings of The Chicago, Rock Island & Texas Railway Company were put into betterments and improvements, and the same is the case with The Chicago, Rock Island and Gulf.

In 1897, L. G. Hastings, then secretary of The Chicago, Rock Island and Texas Railway Company reported to the Interstate Commerce Commission that The Chicago, Rock Island and Texas Railway Company was controlled by The Chicago, Rock Island & Pacific Railway Company, through the ownership of a majority of its bonds. In 1899 he reported it as controlled by the Pacific Company through its ownership of a majority of its capital stock.

On the 2nd day of August 1904, M. E. Sebree, who resides in Ft. Worth, Texas, was trainmaster of The Chicago, Rock Island and Gulf Railway Company, and was also Assistant trainmaster of The Chicago, Rock Island and Pacific Railway Company between the north line of Texas and Chickasha, Indian Territory. He is paid by the Gulf Company for the work he does for it and by the Pacific Company for the work he does for it. S. B. Hovey is Vice President and Superintendent of The Chicago, Rock Island and Gulf Railway Company, and will testify that he is not connected with, nor does he perform any service for any other railroad.

After making certain changes and addition, The Chicago,
39 Rock Island and Gulf Railway Company adopted the book of rules issued by The Chicago, Rock Island and Pacific Railway Company for the control of the operation of its line, and such rules are now in force. The cars and engines belonging to the Chicago, Rock Island and Gulf Railway Company when in need of repairs, have the work done at its shops in Fort Worth and Dalhart, if the cars and engines are convenient to these two points; otherwise, the work is done at some other convenient place either on or off the line of The Chicago, Rock Island and Pacific Railway Company wherever the cars or engines may be at the time the repairs are needed.

On the 2nd day of August 1904, The Chicago, Rock Island and Gulf Railway Company had a different president and altogether different executive officers from any of the lines above listed as included in the Rock Island System. The Chicago, Rock Island and Gulf Railway Company does not now and never has paid any part of the salary of any officer of The Chicago, Rock Island and Pacific Railway Company, or of any of the lines named as constituting the Rock Island System.

Before The Chicago, Rock Island & Gulf Railway Company purchased The Chicago, Rock Island & Texas Railway Company, The Chicago, Rock Island & Mexico Railway Company and The Choctaw, Oklahoma & Texas Railroad Company, M. E. Sebree was train

master of The Chicago, Rock Island & Texas Railway Company and division train master of The Chicago, Rock Island & Pacific Railway Company, with jurisdiction to Chickasha, Indian Territory. Since the purchase by the Gulf Company of the above named Texas lines Mr. Sebree's jurisdiction extends over what were The Chicago, Rock Island & Mexico Railway Company and The Choctaw, Oklahoma & Texas Railroad Company, otherwise there has been no change in his employment or jurisdiction for the past five to ten years.

The Chicago, Rock Island & Gulf Railway Company pays a portion of the salary of a joint train dispatcher located at Chickasha, Indian Territory, under the same character of arrangement which existed between The Chicago, Rock Island & Texas Railway Company and The Chicago, Rock Island & Pacific Railway Company. This train dispatcher in giving orders for the handling of trains on The Chicago, Rock Island & Gulf Railway Company is subject to the control, direction and supervision of the executive officers of The Chicago, Rock Island & Gulf Railway Company as if exclusively employed by it.

40 The rails of The Chicago, Rock Island & Gulf Railway Company on the line running from Fort Worth north connects at the state line with the rails of The Chicago, Rock Island & Pacific Railway Company. The point of connection is somewhere near the middle of Red River on a bridge. At this particular point there is no town, station, or turnout, and the trains going in either direction do not stop at said point. It was not possible to build a town or station at the exact point of connection.

For the purpose of proving any fact not herein stated either party to this suit may introduce in evidence any of the depositions taken by either party in the case of J. D. Buie against the C. R. I. & P. Ry. Co. *et al.*, No. 2406, in District Court, Montague county, Texas, subject to any objection which may or can be urged to said depositions the same as if they had been originally taken in this suit.

Specially reserving the right to object to the introduction of any or all of the foregoing because of immateriality, irrelevancy or incompetency, we agree that it may be used as evidence in above case by either party thereto.

This Dec. 14th 1904.

N. H. LASSITER &
ROB'T HARRISON,
Att'ys for Def'ts.
STEWART & TEMPLETON,
SAM J. HUNTER,
Atty's for Pl't'ff-.

No. —.

AUGUSTA A. PETERSON ET AL.
vs.
C., R. I. & P. RY. CO., Def't.

It is further agreed that A. L. Thomas, upon whom process has been served herein as conductor and agent of defendant, was at the

date of said service and is now and has for many years been a conductor running on and handling passenger trains for the defendant, the Chicago, Rock Island & Pacific Ry. Co., the Chicago, Rock Island & Texas Ry. Co., and later on the Chicago, Rock Island & Gulf Ry. Co. after its purchase of the Texas Company, running and handling such trains between Fort Worth, Texas, and Caldwell, Kan. That the run of said Thomas is now and has been from
41 Fort Worth, Texas, to Caldwell, Kan., as aforesaid on both sides of the state line, and that Caldwell, Kan., is the end of the first passenger division on said lines north of Fort Worth; and it is further agreed that V. N. Turpin, upon whom process was served herein as the ticket agent of the defendant company was at the date of the service of said process and has been for a long time ticket agent of the Chicago, Rock Island & Gulf Ry. Co., at Fort Worth engaged in selling tickets for the said Chicago, Rock Island & Gulf Ry. Co. over its lines and also over the lines of the Chicago, Rock Island & Pacific Ry. Co., and all of its connections.

It is further agreed that the facts are that "Thomas is carried on the Pac. Co.'s pay roll and paid for services rendered while on that Co.'s line north of the Texas state line; and is carried on the Gulf Co.'s pay roll and paid by the Gulf Co. for services rendered on its line south of the Texas state line; and that Turpin is carried on the Gulf Co.'s pay roll alone, and is not carried on the Pac. Co.'s pay roll and is not an agent of the Pac. Co. unless the above stated facts make him one.

STEWART & TEMPLETON,
HUNTER & HUNTER,
Att'ys for Plaintiffs.
N. H. LASSITER AND
ROB'T HARRISON,
Att'ys for Defendant.

Nov. 13, 1905.

EXHIBIT "A."

Articles of Agreement, made and entered into this 2nd day of January 1893, by and between the Chicago, Rock Island and Pacific Railway Company a corporation organized and existing under the laws of the states of Illinois and Iowa, hereinafter called the Rock Island Company, party of the first part, and The Chicago, Rock Island and Texas Railway Company, a corporation organized and existing under the laws of the state of Texas, hereinafter called the Texas Company, party of the second part, witnesseth:

I.

Said Rock Island Company owns and operates, among other lines of railway, a line of railway extending from the city of Chicago, in the state of Illinois, to a point on the south line of the Chick-
42 asaw Nation, in the Indian Territory, where it connects with the railway of the Texas Company.

II.

The Texas Company owns and operates a railway from the point of connection with the railway of said Rock Island Company, on the line between the state of Texas and the Indian Territory, extending thence in a southerly direction through the county of Montague to the city of Bowie, Texas, and is engaged in the construction of its railway between said city of Bowie and the city of Weatherford, in the county of Parker, state of Texas, and proposes to construct branches therefrom and extensions thereof, and desires to raise money to be applied thereto by the sale of it first mortgage bonds. It also desires to make a permanent arrangement with the Rock Island Company for the exchange of traffic.

Therefore, in consideration of the premises and of the several covenants, promised and agreements hereinafter set forth, the parties do covenant, promise and agree with each other as follows:

Article I.

For the purpose of avoiding unnecessary repetition, as well as misapprehension, in the construction and performance of the covenants and agreements hereinafter set out, it is agreed:

SECTION 1. The word "traffic," when used in these articles, shall be taken as equivalent of the phrase, "passengers and property received for transportation." The phrase "through traffic" shall be taken as the equivalent of "traffic which can be transported with reasonable directness from the point of shipment to the point of destination, over a line composed in whole or in part, of portions of the railways of each of the parties hereto;" and "local traffic" as the equivalent of "traffic which can be transported on the most direct line from the point at which it shall originate to the point to which it shall be destined, wholly over the railway of one of the parties hereto;" the phrase "through line" as the equivalent of "a line composed in whole or in part of some portion of two or more railways over which through traffic, as above defined, can be transported;" the "point at which traffic originates," and "originating point" as the equivalent of "the place at which traffic is delivered by the owner or consignor to a common carrier for carriage over a through line;"

"the point of destination" as "the point at which such traffic
43 shall be delivered to the consignee."

SECTION 2. It is declared to be the purpose of the parties hereto, by the execution of these articles and the performance of the several covenants, promises and agreements herein set out, to establish and operate through lines of railway, which shall connect, when the same can be done with reasonable directness, all points on the lines of both of the parties hereto, treating all railroads with which either party shall have any traffic or running arrangements, or in which it shall have any leasehold interest, as a part of the line of the party hereto with which it is so related, and to secure the operation of all said lines as to through traffic, as they should be operated if all were owned by one corporation.

Provided, however, that nothing herein shall be so construed as to confer upon any railway company which may have a railroad connecting with the lines of either of the parties hereto any rights or privileges otherwise than upon and during the election and direction of the parties hereto, or as a successor or assignee of one of the parties hereto.

Article II.

The Rock Island Company covenants, promises and agrees with the Texas Company:

SECTION 1. That it will purchase of the Texas Company its bonds, when they shall be offered to it by said Texas Company, to an amount not exceeding fifteen thousand dollars per mile for railway which shall have been actually constructed by said Texas Company. It will also purchase from said Texas Company all first mortgage bonds which shall be issued by it and secured by said first mortgage, payable on the 1st day of January, A. D. 1933, with interest at the rate of six per centum per annum, for the equipment of said railroad to an amount of par value equal to five thousand dollars per mile for railway actually constructed, not exceeding, however, in such par value the actual amount expended in the purchase of such rolling stock. It will pay for all bonds purchased of the Texas Company the par value thereof, in cash at the time of the delivery of the bonds.

SECTION 2. That it will, so far as it lawfully can, deliver to the railway of the Texas Company all west bound traffic which may be received by it for transportation, to any point which can be reached with reasonable directness by through lines composed in whole
44 or in part of some portions of the railways of the parties hereto, and that it will make all lawful and reasonable efforts to secure the transportation of all such through traffic which may be received by it over such through lines.

SECTION 3. It will furnish freight cars for the transportation of through traffic as nearly as shall be practicable in the proportion of its mileage to the entire mileage over which such traffic shall be moved between the points where it shall be received on the railways of the parties hereto and the points of destination or delivery to a connecting carrier.

SECTION 4. It will receive from the Texas Company all through traffic which said Texas Company shall deliver to it in the performance of its covenants, promises and agreements herein contained; and that it will transport the same to destination when such destination is upon any of its own railways, or to the proper connecting carrier, when such destination is beyond its own line.

Article III.

The Texas Company covenants, promises and agrees with the Rock Island Company as follows:

SECTION 1. That it will, so far as it lawfully can, deliver to the railway of the Rock Island Company, at the most accessible or con-

venient points, all eastward bound through traffic which may be received by it for transportation to any point which can be reached with reasonable directness by a through line which is composed in whole or in part of a portion of the railways of the parties hereto; and that it will make all lawful and reasonable efforts to secure the transportation of all such through traffic which may be received by it over such through lines.

SECTION 2. That it will receive from the Rock Island Company at the point of junction, such west bound through traffic as shall be offered to it by said Rock Island Company, at such points, and will safely and promptly transport and deliver the same to destination if upon its own railway, or to connecting common carrier when the point of destination is beyond its own line.

SECTION 3. It will furnish freight cars for transportation of through traffic, as nearly as shall be practicable, in the proportion of its mileage to the entire mileage over which such traffic shall be moved between the point at which it shall be received on the railway of the parties hereto and the point of destination or delivery to a connecting carrier.

Article IV.

The parties hereto mutually covenant, promise and agree:

SECTION 1. Each will construct and maintain its railways and appurtenances thereto belonging, in such condition as will enable it to promptly and safely transport and deliver all through traffic which may be delivered to it for transportation over any through line hereby established.

SECTION 2. All traffic which shall be received on the railway of either party hereto shall be transported over the most direct line, from the points at which it shall be received to the points to which it shall be destined, or be delivered to a connecting carrier not a party herein.

SECTION 3. All through traffic received for transportation over any through line hereby established shall be waybilled from the point at which it shall be received on any railway of either party hereto to the point of destination, if upon any such railway, or to the point at which it shall be delivered to a connecting line.

SECTION 4. Each party shall control the movement of traffic on its own railways, and defray all expenses which may be incurred in moving and handling the same while under its control.

SECTION 5. Time schedules for running through passenger, freight and express train, shall always be made and agreed upon by the parties, and shall be so made as to connect from the line of one railway to the line of the connecting railway without delay or hindrance; but it is distinctly understod that in making such schedules, the convenience of all parties shall be regarded, and that the through trains shall not be so arranged as to connect with any train operated by either one of the parties on its own railway to the serious prejudice of the other party, except upon just compensation to the parties so prejudiced. If the parties shall not be able to agree upon the establishment, modification, alteration or abrogation

of any schedule, either may require that the matter in dispute shall be determined by reference, as hereinafter provided.

SECTION 6. The rates on all east bound through traffic which shall pass over any through line hereby established, shall be fixed from time to time by the Texas Company, and the rates on west bound through traffic shall be fixed by the Rock Island Com-
46 pany. If either party shall at any time feel aggrieved by any rate fixed by the other, it may make such grievance the basis of a complaint, which shall be determined by reference as hereinafter provided.

SECTION 7. All through rates shall be pro-rated between the parties hereto upon the basis of the mileage over which such traffic shall be transported, counting every mile of the railroad of the Texas Company as one and one-half miles, and every mile of the railroad of the Rock Island Company as one mile:

Provided, that either party hereto may, at the end of each period of five years, demand a readjustment of the division of through rates, and in case the parties hereto cannot agree upon such readjustment of such division, it shall be determined by reference, as hereinafter provided.

SECTION 8. Full and accurate accounts shall be kept by each party, showing the kind and amount of through traffic which has passed over its railway, the places where it was received and those where it was delivered to the consignee, or to a line connecting with the through lines hereby established, with the amount received for transporting the same. A statement of its own account from the first to the last days of each month, both inclusive, shall be delivered by each party to the other, within twenty days immediately succeeding the last day of the month covered by such statement. Each company shall have the right by its attorney or agent to examine at any time during business hours, on business days, the books, accounts, and papers of the other party hereto, relating to the through business received and transported, and shall also have the right to take transcripts of such books, accounts and papers. When statements are not disputed they shall be adjusted and balances paid within five days after the exchange of statements is completed. Balance due on account of through traffic shall be promptly paid without regard to other accounts which may be pending between the parties.

The Texas Company will also keep a full, true and accurate account of its receipts from all sources, and its disbursements for all purposes; and exhibit the same upon demand to the Rock Island Company or its duly authorized agent.

SECTION 9. Each of the parties will furnish its quota of cars for the transportation of through traffic so that the mileage shall be equalized as nearly as shall be practicable, and if any party shall furnish cars in excess of its proportion, it shall be entitled to
47 compensation for such excess at the rates usually allowed for car service. The Rock Island Company will, on the request of the Texas Company, furnish all such mail, passenger and baggage cars as may be needed in transporting mails, baggage, and

passengers over the railway of the Texas Company, together with such engines and other equipment as may be necessary to the operation of said Texas Company, and shall receive for the use of the same the compensation usually allowed at the time in the state of Texas for such use.

SECTION 10. Liability for damage to persons or property in transit over the through lines hereby established shall be borne and paid by the party upon whose railway the damage shall occur. When the location of the cause of the injury is concealed or unknown, the damage sustained shall be borne and paid by the parties who share in the through rates charged for the transportation thereof, in the proportion in which such rates shall be divided.

SECTION 11. Cars of one of the parties hereto receibed on the line of the other, shall be promptly returned to the other, preference always being given to loaded cars. All carload freight shall be sent over the lines of the parties hereto without transfer, when the cars in which traffic is loaded are in good condition.

SECTION 12. The parties will join in operating through trains for the transportation of through traffic, and each will furnish power to move the same over its own tracks.

SECTION 13. If any difference shall arise as to the construction of these articles, or in reference to the performance of any covenant, promise or agreement herein contained, either party may demand a decision of the same by referees. The party demanding the reference shall serve upon the other party a written notice of such demand, and the name of one disinterested person chosen by the demandant as referee. The party so notified shall, within ten days after receiving such notice, select a disinterested person to act as referee. If the party duly notified shall neglect or refuse to select a referee, within ten days after receiving such notice, the referee chosen shall select an addition- referee. The referees thus chosen shall fix a time and place for the hearing and shall give the parties reasonable notice thereof. At the time and place named they shall proceed wth the hearing, unless it shall be continued for cause shown. If the referees thus chosen shall unani-
48 mously agree upon an award or decision, and reduce the same to writing, it shall be binding and conclusive upon the parties. If they cannot agree, they shall make a statement of the facts which are not disputed and then selected a disinterested person as the third referee. To the board thus constituted shall be submitted the agreed statement of facts and such evidence as the parties may produce, concerning the disputed matters, reasonable opportunity to be heard to be given to each of the parties. The award or decision of the majority of the board thus constituted when reduced to writing and served upon all the parties, shall be binding and conclusive upon each.

SECTION 14. No differences which may arise, as to the construction or performance of any of the covenants, promises, or agreements herein contained shall affect, while it remains undetermined, the manner of transacting business pursuant to these articles; but 't shall be transacted and settlements and payments made as before

the existence of such difference; and when it is finally determined by reference, as above provided, or otherwise, payments and restitution shall be made by the respective parties, as may be required by the award of the referees, or provided in the agreement of adjustment, as the case may be.

SECTION 15. If for any reason any of the covenants, promises or agreements in any of these articles expressed shall be adjudged void, such adjudication shall not affect the validity or obligation of any other covenant, promise or agreement which is in itself valid. A controversy as to the validity or construction of any covenant, promise or agreement shall not delay the performance of any other. In the event of the failure in law of any of the covenants, promises or agreements herein contained, steps shall be taken, and such contracts shall be made as shall be advised by counsel, to carry into effect the purposes and intent of this agreement.

SECTION 16. This contract shall be obligatory on the parties for a term of nine hindred and ninety-nine years from the first day of January A. D. 1893; and the Rock Island Company is expressly authorized to assign and transfer its interest in the same by mortgage or other conveyance of its railway and its railway property.

In witness whereof, said The Chicago, Rock Island and Pacific Railway Company, and the Chicago, Rock Island and Texas Railway Company, have caused their corporate seals to be im-
49 pressed hereon, and the signatures of their presidents and secretaries to be hereto affixed, the day and year first above written.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,

(Signed) By R. R. CABLE, *President.*

Attest:

(Signed) W. G. PURDY, *Secretary.* [SEAL.]

THE CHICAGO, ROCK ISLAND AND TEXAS RAILWAY COMPANY,

(Signed) By M. A. LOW, *President.*

Attest:

(Signed) HARRY F. WEBER, *Secretary.* [SEAL.]

EXHIBIT "B."

THE STATE OF TEXAS, *County of Tarrant:*

Know all men by these presents: Whereas, heretofore, on to-wit: the 2" day of January A. D. 1893, a traffic contract was entered into by and between the Chicago, Rock Island & Pacific Railway Company, a foreign corporation, signing by its president, R. R. Cable, and the Chicago, Rock Island & Texas Railway Company, a Texas railroad corporation, signing by its president, M. A. Low, and

Whereas, the Board of Directors of each of said companies have

authorized and directed the annullment and cancellation of said contract.

Now, therefore, the said railway companies hereby mutually agree, in consideration of the benefits that will accrue to each on account of the annullment and cancellation of said contract, that the same be and it is hereby canceled and annulled, and each party thereto is hereby fully released and relieved from each and every provision and obligation therein contained.

This contract is executed in duplicate.

In testimony whereof, witness the signature of each of the parties hereto, by its proper officer, attested by its secretary, on this the 14 day of April A. D. ~~1903.~~ 1903.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,

By —— ——.

Attest:

—— ——,

Secretary.

CHICAGO, ROCK ISLAND & TEXAS RAILWAY COMPANY,

By —— ——.

Attest:

—— ——,

Secretary.

50 The plaintiffs introduced in evidence the Twenty-fourth Annual report of the Chicago, Rock Island & Pacific Ry. Co., defendant herein, for the year ending June 30th 1904, to its stockholders and in which the following among other things, appear as a part of said report:

"To the Stockholders of The Chicago, Rock Island & Pacific Railway Co.:

The Board of Directors submit their report of the operations and affairs of the Chicago, Rock Island & Pacific Ry. Co. for the fiscal year ended June 30th 1904. They have included therein, operations and affairs of the operated lines and auxiliary companies forming the "Rock Island System."

In order to make exhibits comparative, the figures for the last preceding year have been restated to meet changed conditions due to the including in this report the operation of the auxiliary companies.

These lines thus forming the Rock Island System are the following:

Mileage Operated.

The Chicago, Rock Island & Pac. Railway	6,760.74
The Chicago, Rock Island & El Paso Railway	111.50
The Chicago, Rock Island & Gulf Railway	386.92

On page 9 of said report, under the head of "Property" and "Franchises," occur the following:

During the year expenditures were made: For construction of extensions and completion of System lines as follows:

Fort Worth, Tex. to Dallas, Tex.	111,371.55
Yarnall, Tex. to Amarillo, Tex.	108,615.64
Jacksboro, Tex., to Graham, Tex.	32,138.96
Red River to Ft. Worth, Tex.	28,013.04
Texhoma (Texas State line) to Bravo, Tex.	9,646.03
Texola (Texas State line) to Yarnall, Tex.	2,328.30

In addition to the expenditures during the year as above, there has been transferred to property account sundry amounts expended prior to July 1st, 1903, for construction of new lines and shops, and purchases of equipment which have been heretofore stated in the system assets as "Advances for construction and equipment;" the property represented by such amounts having been deeded to The Chicago, Rock Island & Pacific Railway Co., or The Chicago, Rock Island & Gulf Railway Co., $23,169.83.

51 There has also been transferred to this account the expenditures made prior to July 1st 1903, for the purchase of shares of capital stock of the Burlington, Cedar Rapids and Northern Railway Company and the Rock Island & Peoria Railway Company, also cost of the stock of the Choctaw, Oklahoma and Gulf Railroad Company in excess of its par value, and the value of bonds of the Chicago, Rock Island and Texas Railway Company, owned by the Chicago, Rock Island and Pacific Railway Company; the value of said property appearing upon balance sheet shown in prior year's report as "Stocks and Bonds of Constituent Companies," $16,446,009.73.

On page 11 of said report, under the heading "New Lines Open for Operation," the following statements are made, viz:

Additions have been made to the operated system — mileage since the last report as follows:

By the Chicago, Rock Island & Gulf Railway Company:

Ft. Worth, Tex. to Dallas, Tex., 33.26 miles opened for operation in December 1903.

Yarnall, Texas, to end of track west of Amarillo, Tex., 18.40 miles opened for operation in November 1903.

Corrections in measurements, Red River to Ft. Worth, Tex., .83 miles.

Operated system mileage was decreased 18.22 miles between Yarnall, Tex. and Amarillo, Texas.

Fort Worth, Tex. to Dallas, Texas.—This line was completed and the line opened for operation by the Chicago, Rock Island & Gulf Ry. Co. December 1st 1903. It is 33.26 miles in length, connecting with the line of the former The Chicago, Rock Island & Tex. Ry. Co. at Ft. Worth and extending to Dallas, where, by an agreement with

the Gulf, Colorado & Santa Fe Railway Co., it has the joint use of the latter company's terminal facilities.

The opening of this line gives the Gulf Company direct entrance into Dallas, enabling it to compete for the traffic of that important commercial center.

On page 12 of said report is the following statement, viz:

System Mileage Under Construction.

By the Chicago, Rock Island and Gulf Ry. Co.:

Amarillo, Tex. to Texas—New Mexico boundary..... 69.87

Amarillo, Tex. to Tucumcari, N. M.—The grading for a considerable portion of this line has been done from Amarillo westward. It was deemed advisable, however, to suspend active con-
52 struction until such time as the business outlook would warrant the expenditure necessary to complete.

Consolidation of Texas Lines.

The Legislature of the state of Texas, by an act passed March 27th 1903, authorized the sale of the railroads and properties of the Chicago, Rock Island and Texas Railway Company, extending from the Red River to Fort Worth, Tex., with a branch from Bridgeport, Tex., to Graham, Tex. The Chicago, Rock Island and Mexico Railway Company extending from the Texas-Oklahoma line near Texhoma to the Texas-New Mexico line at Bravo; and The Choctaw, Oklahoma and Texas Railroad Company, extending from the Texas-Oklahoma line near Texola, Tex., to Amarillo, Tex., to the Chicago, Rock Island and Gulf Railway Company which had constructed a line of railroad from Dallas, Tex. to Fort Worth, Tex., where it connected with the line first named above.

In accordance with the authority granted, the properties referred to were, by appropriate corporate action, deeded to The Chicago, Rock Island and Gulf Railway Company on December 1, 1903.

This consolidation permits the properties in question to be operated by one management instead of four separate sets of officials as heretofore, resulting in economy of operation and greater efficiency in service.

In stating the assets and liabilities of the companies forming the System, the holdings of The Chicago, Rock Island and Pacific Railway Company in the bonds and capital stock of auxiliary lines, together with loans between system companies, have been eliminated from the liabilities and a like reduction made in the value of the assets; the figures as stated, therefore represent the value of the assets and the real liability without duplication.

By Order of the Board of Directors,

B. L. WINCHELL,
President."

The genuineness of this report was conceded.

Plaintiff also introduced in evidence the Second Annuel Report of the Board of Directors to the Stockholders of the "Rock Island Com-

pany" to its stockholders for the year ending June 30th 1904, and in which the following statements appeared, viz:

"To the Stockholders of the Rock Island Company:

53 The Board of Directors herewith submit their report of The Rock Island Company for the fiscal year ended June 30, 1904, together with data and information concerning the affairs of the companies in which your company is interested through ownership of stock.

The Rock Island Company is the owner of the entire capital stock, except directors' shares, of the Chicago, Rock Island & Pacific Railroad Company, a corporation of the State of Iowa.

The Chicago, Rock Island and Pacific Railroad Company owns 695,574.75 shares of the capital stock of The Chicago, Rock Island and Pacific Railway Company, a corporation of the States of Illinois and Iowa, and 286,349 shares of the common capital stock of the St. Louis and San Francisco Railroad Company, a corporation of the State of Missouri.

Each of the two latter companies operates independently its lines of railway and each is interested through the ownership, directly or indirectly, of at least a majority of the capital stock, in certain subsidiary companies, each of which operates its property independently. The lines of the Chicago, Rock Island & Pacific Ry. Co., including lines formerly of the Choctaw, Oklahoma and Gulf Railroad Company, The Burlington, Cedar Rapids & Northern Ry. Co., and the Rock Island & Peoria Ry. Co., together with the lines of its subsidiary companies, namely: The Chicago, Rock Island & Gulf Ry. Co. and The Chicago, Rock Island & El Paso Ry. Co. comprise what is known as the "Rock Island System."

As the Rock Island Company is the owner of the entire capital stock, except directors' shares of the Chicago, Rock Island and Pacific Railroad Company, the income of both companies is included in the following statement:

This report was made by order of the Board of Directors, was dated October 17th 1904, and was signed by Robt Mather, President. Appended to this report as a part of it under the head of "Statements and Exhibits, Rock Island System Lines," was the following statement, to-wit:

On page 23 of said report under the heading of "Rock Island System-State of Mileage Operated:

The Chicago, Rock Island & Gulf Ry. Co.:

Terral, I. T., (Red River) to Dallas, Tex	126.67
Bridgeport, Tex. to Graham Tex	53.29
Texhoma, O. T., to Bravo, Tex. N. M. State line	91.75
Texola, O. T. (Tex. State line) to Amarillo, Tex	112.97
Total Chicago, Rock Island & Gulf Ry. Co	386.68

54 Plaintiff also introduced in evidence a railroad folder of date July 10th 1904, on the back of which was printed in large white letters on a dark back ground:

"Rock Island System."

"Time Table."

And in which appeared the names of the Chicago, Rock Island & Pacific Ry. Co., The Chicago, Rock Island & El Paso Ry. Co., and The Chicago, Rock Island & Gulf Ry. Co., together with a list of the names and residences of the Passenger, Freight and Traveling Agents of said roads respectively, and showing also a schedule of passenger train service on all of said lines.

On the inside cover of said folder is a map, on which is traced or printed in heavy solid black, the lines of the Chicago, Rock Island & Pac. Ry. Co., the Chicago, Rock Island & El Paso Ry. Co., and the Chicago, Rock Island & Gulf Ry. Co., so connected as to show them all belonging to the same system. Said lines all being the same in size and color, and below which said map on said page is printed the following:

"The Rock Island States of America."

"The Rock Island System cover a territory which is 1,000 miles long by 1,000 miles wide, supports a population of more than 21,000,000 people and is capable of supporting a- least four times that many. The area of this territory is as great as the combined area of France, Germany, Italy, Spain, Austria-Hungary, Denmark, The Netherlands, Turkey, Switzerland and Greece, and its productive capacity is greater.

Here are produced more than half the wheat, more than half the corn and nearly half the cotton, silver and gold produced in the United States."

This is the folder referred to by Mr. Hovey in his testimony.

The annual Report of the C. R. I. & P. Ry. Co. above mentioned shows that the Board of Directors of said Company consists of thirteen members, while the executive committee of said company consists of eight members. The Report of the Rock Island Company above mentioned shows that the Board of Directors of said company consists of sixteen members while its finance committee consists of six members. Eleven members of the Board of Directors of the Railway Company are also members of the Board of Directors of the Rock Island Co. Five members of the executive committee of the Railway Company are also members of the finance committee
55 of the Rock Island Company. All of the officers of the Rock Island Company as given in said report of said company were, with two exceptions, shown to be also officers of the Railway Company as disclosed by the report of said company.

These reports show that a majority of the officers and directors of each of said companies are common to both of them.

S. B. HOVEY was introduced by plaintiff as a witness, and testified as follows:

—. ——.

A. I am Vice president and superintendent of the Chicago, Rock Island & Gulf Ry. Co.

Q. How long have you been with this Gulf Railway Co.?

A. Since its existence.

Q. When was that?

A. About two years ago.

Q. It was organized about two years ago?

A. Yes sir.

Q. Prior to that time in what service were you?

A. Chicago, Rock Island & Texas.

Q. That was a Texas corporation?

A. Yes sir.

Q. Has been bought out by the Gulf?

A. Yes sir.

Q. Prior to that time in whose service were you?

A. I was at work for the Chicago, Rock Island and Pacific.

Q. Where?

A. In Kansas.

Q. There was a long contract between these two companies, Chicago, Rock Island and Pacific and Chicago, Rock Island and Texas?

A. A traffic contract.

Q. Those two roads operated under that contract until by virtue of an enabling statute, the Gulf people bought the Texas Company?

A. Yes sir.

Q. Who was Hallock?

A. He is Superintendent now at Chickasha.

Q. How long has he occupied that position?

56 A. Since Mr. Johnson left there.

Q. This is on the line of Pacific?

A. Yes sir.

Q. What position did he occupy prior to that time?

A. Chief dispatcher.

Q. Did he control all the trains in Texas?

A. Just train orders.

Q. Didn't he control the making up of trains and giving the orders?

A. No sir, only the moving of trains, and any train matters.

Q. Didn't he direct where they should pick up a system car and drop another system car and so on?

A. As chief dispatcher, that is a part of his business.

Q. I am talking about his actions as chief dispatcher of the train?

A. Yes sir, he was employed by the Chicago, Rock Island & Gulf.

Q. He was also of the Gulf Company?

A. I just stated he was of the Gulf Company.

Q. Was he also an employé of the Pacific?

A. Yes sir, a joint man.

Q. The trains operated by the C. R. I. & P. Co. and by the C. R. I.

& G. Co. across the state lines do not stop at such lines and charge cars and locomotives and crews there, do they?

A. No sir.

Q. Such trains are operated by the same crews right across the Texas state line without stopping there are they not?

A. Yes sir.

Q. In the general settlement between the Gulf Company and the Pacific Company it is all done on a mileage basis?

A. Yes sir.

Q. Do you know who the stockholders of your company are?

A. Yes.

Q. Who voted it?

A. I voted it at the last meeting.

Q. All the stock?

A. No sir.

Q. How much did you vote the last meeting?

A. Possibly between thirty-eight and thirty-nine hundred *d*hares.

Q. Who gave you the shares?

57 A. Mr. Johnson.

Q. Who is Mr. Johnson?

A. He is a man that owns I think 3850 shares.

Q. Didn't Mr. Johnson hold it as pledgee?

A. I don't know.

Q. Mr. Hovey, when you were applied to for cars and movements of trains do you give directions to the conductors of the Gulf road as to making up trains, what cars to cut out and what to pick up?

A. I don't know that I understand your question.

Q. Suppose I apply to you as a cattle man, want to ship a car, in making up the train do you give orders to the train?

A. I send the order to the Chief dispatcher.

Q. Where is he?

A. Located at Chickasha.

Q. Where?

A. In the Indian Territory.

Q. On the line of the Chicago, Rock Island & Pacific road?

A. Yes sir.

Q. What do you send the orders up there for?

A. Because he is our employé.

Q. He is also an employé of the Pacific road?

A. Yes.

Q. Has full jurisdiction here?

A. As to handling cars; that is what he is paid for.

Q. Then the movement of every train on the Gulf road was directed from Chickasha?

A. Yes sir.

Q. You have posted on your window here, on your agent's office, this big map of the world showing the system of the lines of the Rock Island System as patented or copyrighted in 1902, by the Pacific railroad company, don't you?

A. Yes, representing the route.

Q. You distribute calendars with that printed on them?

A. Yes, advertising the route.
Q. You advertise their line and they advertise yours, do they not? Just answer the question.
58 A. They advertise this line as I tell you, and we pay part of the expense.
Q. You advertise their line?
A. Yes, in soliciting.
Q. Is it not a fact that all the operations on the line of the Gulf are directed by the Chief dispatcher at Chickasha?
A. Yes, most all of them; that is what he is paid for.
Q. Is it not a fact that the daily reports of the cars on your line and everything of that sort are made to the chief dispatcher at Chickasha?
A. Couldn't handle the business without it. Nearly all of our men run on the C. R. I. & P.
Q. Where were you and in what business were you engaged when the Pacific Railway built to Terral, the boundary line of Texas?
A. I was in Harrington.
Q. In whose employ and in what capacity?
A. I was superintendent there of the Chicago, Rock Island & Pacific and resigned there to come here.
Q. Who built the road to Terral?
A. The Chicago, Rock Island & Pacific.
Q. By what instrumentality or through what agent or employés?
A. Mr. Parker, I think, was the man that handled the construction of that line.
Q. This road after it left Terral and came down through Texas was built by the same people?
A. Some of the same construction.
Q. And the money was furnished by the Chicago, Rock Island & Pacific Co. with which to build it?
A. Yes sir.
Q. Was built right on into Texas? Is that true?
A. Yes sir.
Q. Never stopped at Red River at all?
A. It took them some time to build the bridge.
A. Oh, yes, as long as it took them to build the bridge?
A. Yes.
Q. At that time Mr. Low held all the stock except what they called the directors shares, or one share issued to certain individuals
59 to enable them to become directors?
A. Yes sir.
Q. Mr. Low was general attorney for the Pacific?
A. Yes sir.
Q. These directors paid nothing at all for the shares they held, is not that a fact?
A. No sir.
Q. Paid nothing?
A. No sir, they did pay something.
Q. What did they pay?

A. They paid something on each share thet got, or they couldn't hold them.
Q. Didn't get but one?
A. No sir.
Q. How much did they pay?
A. Five per cent.
Q. Your share was $100, and you paid $5.00?
A. I paid five per cent.
Q. It was $100 per share?
A. Yes sir.
Q. How much did Mr. Harris pay, he was another one of the directors?
A. Yes sir.
Q. How much did he pay?
A. He must have paid the same.
Q. Who were the other directors?
A. Harris, Lowry and Matthews.
Q. They were all employés of the Pacific Railway Company except Matthews and one other?
A. No sir, they were not employés.
Q. Besides these, the balance were all employés of the Pacific?
A. I think so.
Q. Now Mr. Hovey, I believe you stated it to be a fact that under this agreement attached to your deposition in the Buie case, that the Chicago, Rock Island & Texas operated under the terms of that agreement?
A. Yes sir.
Q. Up to the time the legislature passed an act authorizing the Gulf Railroad company to buy the Texas railroad company?
60 A. Yes sir.
Q. After the legislature, or about the time the legislature passed that act, the Gulf Company, the present company, which comes to Dallas, was chartered?
A. Yes sir.
Q. Then the Gulf company bought the Texas company and the El Paso company and several others of these roads?
A. Yes, the New Mexico company.
Q. Didn't pay a dollar for them, did they? Not a dollar?
A. That is a matter that was handled by the president.
Q. Who was the president?
A. Mr. M. A. Low.
Q. Was he general attorney for system?
A. He was attorney for the C. R. I. & P.
Q. He was the man who handled that, he didn't live in Texas?
A. No sir.
Q. He was vice president?
A. Yes sir.
Q. The president was gone?
A. Yes sir.
Q. The duty of the vice president devolved upon him?
A. Yes sir.
Q. Mr. Leeds was president of the Gulf Company?

A. When this property was sold, yes; Mr. Low was president when it was organized.

Q. When these roads were sold you was a stockholder in all of them?

A. Yes sir.

Q. What did you get for your stock?

A. Just what I paid in, five dollars.

Q. Ever draw any dividend on it?

A. No sir.

Q. Never been any declared?

A. No sir.

Q. Don't you know it to be a fact that this deal was transacted, negotiated and consummated up here in Chicago by Mr. Low and his associates for the simple reason that The Chicago, Rock Island and Pacific owned all the stock of this Texas Company except
61 a few shares issued to people to enable them to become directors and that is the reason it was all done up there from the controlling power?

A. No sir, I do not.

Q. And yet, being vice president of the Gulf company, with the president absent and a transaction of that magnitude, yet you are unable to tell the court what consideration, if any, was passed?

A. The records will show, I would not undertake to tell.

Q. That was a pretty big transaction, was it not, Mr. Hovey?

A. Yes.

Q. Who consulted you about it, anybody?

A. Yes sir.

Q. Who?

A. The president.

Q. What president?

A. Mr. Leeds. Mr. Low was president a short time before that.

Q. Mr. Leeds was also president of the Pacific Company at that time?

A. Yes sir.

Q. He was also president of the Rock Island Company at that time?

A. I think so.

Q. He was a member of all three Boards of Directors?

A. I think so, he was on our board.

Q. Where did that conversation between you and Mr. Leeds occur?

A. I did not have a conversation with him, I had a letter from him.

Q. What was the contents of that letter?

A. I don't remember exactly.

Q. The Gulf Company was going to take in the other two companies? Just simply informed you of the fact?

A. Yes sir.

Q. Is it not a fact, Mr. Hovey, that the Chicago, Rock Island & Pacific Railway Co. organized and furnished the money for the Chicago, Rock Island & Texas, to enable it to get into Ft. Worth and Texas, and the men ostensibly connected with the Texas road

had no money, had no power to build a railroad, was not railroad men, except as some of them were employés of the Pacific Company? Is not that a fact?

A. No sir, I don't know that it was. Some of the contractors were not railroad men.

62 Q. They were not railroad men, they were not moneyed men?

A. No sir, not what you call moneyed men proper.

Q. Could they build to Fort Worth?

A. No sir, not without getting assistance.

Q. They knew when they organized that company that it was impossible to build that road from Terral to Fort Worth, except the Chicago, Rock Island & Pacific actually built, in the name of the Texas road; is not that a fact?

A. The Chicago, Rock Island & Pacific furnished some of the money, it was got through them.

Q. Didn't they put every dollar?

A. Yes, to build through there.

Q. Is it not a fact that the sale of the Texas road and the El Paso road and the Mexico road to the Gulf Road was all to enable these four different roads simply to consolidate and get under one management, management of the system?

A. Yes sir.

Q. Didn't the Gulf road get orders to buy this road these other three roads from the Chicago, Rock Island and Pacific the holders of its bonds and stocks?

A. I cannot say whether—what the president's idea was or what started him in the first place.

Q. All you know is that the president of the Pacific Company wrote you merely announcing the fact that this was to be done or had been done?

A. Yes sir, if it could be done.

Q. This book you say you recognize here as Form A 327-Rock Island System, list of officers, station agents, etc., May 1st 1903.

A. Yes sir.

Q. Who got up that book?

A. A. Goodnow.

Q. He was the general manager of the Rock Island System?

A. Yes sir.

Q. Was then?

A. I suppose so, but not the Rock Island & Gulf.

Q. At the time this book was gotten out The Chicago, Rock Island & Gulf had not been incorporated?

63 A. I don't remember what that date was.

Q. But the Texas road was incorporated; it was embraced in here Chicago, Rock Island and Texas Railway Company, S. B. Hovey, Vice President and General Superintendent; M. E. Sebree, Trainmaster?

A. Yes sir.

Q. The Gulf was not embraced because it was not incorporated until subsequent; the Texas road of which you were Vice president

was part of the system at that time—at the time this book was circulated?

A. Yes we were working together.

Q. Did you make any protest when this was incorporated?

A. No sir.

Q. Didn't your office make reports to the Freight Traffic Manager of the System at Chicago? Reports of the C. R. I. & G. business?

A. There was no reports going out except to the president, except in connection with Mr.——

Q. Instead of making them to the head of the traffic department you make them direct to the president of the road, Mr. Winchell?

A. Yes.

Q. He is also president of the Pacific Company?

A. Yes sir.

Q. He is of the C. R. I. & P. and of the Gulf?

A. Yes sir, he is president; he is one of the directors of the Gulf.

Q. Your officers do furnish Mr. Winchell all of the detail data necessary to enable him to know what proportion of the Gulf road?

A. He gets a report, yes.

Q. From those reports they are able to tabulate your gross earnings and gross expenditures, know the revenues as a whole, the number of miles per car, and everything about it; is not that a fact?

A. I suppose they can.

Q. Don't you, whenever you care to do it, discharge the employés of the Pacific Co., when they come down into Texas on these three roads?

A. No sir, I never did.

Q. Never discharged one?

A. If any one came down here and broke any of the rules I would just write to the Superintendent and tell him I didn't want that man any more.

Q. What superintendent?

64 A. I am just speaking of a case, if it should happen. I have never done so. Never have discharged an employé of the Rock Island & Pacific.

Q. They turn off your men whenever they want to?

A. The same way.

Q. They turn them off, discharge them?

A. They can discharge them up there from that road, yes sir.

Q. Can discharge them from yours too?

A. No sir, I would not want anybody who broke the rules, I would not want to keep that employé.

Q. Whenever the Chicago, Rock Island & Pacific authorities discharge your men up there you don't take them back?

A. No sir, never have.

Q. You have just adopted the rules of the Chicago, Rock Island & Pacific by a sweeping order?

A. The same rules we have been working under some time. We have adopted and approved them.

Q. Is it not an actual fact that the Gulf road is operated with reference to the Pacific road just as did the Texas Company with the

Pacific road the contract between the Texas road and the Pacific was canceled?

A. No sir.

Q. Don't you actually run trains the same?

A. Yes sir, we couldn't get along without that.

Cross-examined:

Q. The operation of trains, passenger train- and through freight trains are now just as they were before the Rock Island and Texas ceased to exist?

A. Yes, just the same.

Q. Does the Pacific Company pay any part of the salary of any of the heads of departments of the Chicago, Rock Island & Gulf Company?

A. None for our general office.

Q. It pays its proportion of expense of train men who work on the road according to the number of miles run?

A. Yes sir. It pays the train men according to the number of miles run on its rails.

Q. Your company pays the expense of the men while on your rails?

A. Yes sir.

65 Redirect examination:

Q. You say the Gulf has some locomotives?

A. Yes sir.

Q. Who did you buy them from?

A. Bought them from the Pacific.

Q. Where did you get the money you refunded to the city of Dallas?

A. Out of our treasury.

Q. Didn't you get it from Chicago?

A. We got it from that depository, yes sir.

Q. Where did you have it deposited? With the Chicago, Rock Island & Pacific?

A. Yes sir.

Q. Keep your deposits with them?

A. Yes sir, six per cent interest on it.

Q. Mr. Sebree is trainmaster at Fort Worth?

A. He used to be.

Q. Who is his successor?

A. Mr. Jones.

Q. Mr. Jones has jurisdiction up to Chickasha?

A. Yes, they — part of his salary.

S. B. HOVEY testified also that the C. R. I. & P. Ry. Co. did not own all of the stock of The C. R. I. & G. Ry. Co.

S. B. HOVEY testified in reference to a letter head that was exhibited to him, which had printed on it "Rock Island System" and printed underneath that "Choctaw Oklahoma and Gulf Railroad Company," that he had no more to do with the C. O. & G. than with

the New York Central, and that the words "Rock Island System" was a kind of trade mark.

S. B. HOVEY testified in reference to Halleck's authority as Division Superintendent that south of Red River he had no more authority than the attorney questioning him, when he held the position of chief dispatcher had the same authority as any other such dispatcher for that division.

66 S. B. HOVEY testified that C. H. Kenna was car service agent of The C. R. I. & P., and that he had no jurisdiction over cars of The C. R. I. & G., and The C. R. I. & G. had a car service agent of its own. That The C. R. I. & G. ran a local freight daily from Fort Worth, one of the termini of its line, to Terral, the northern terminus and back again, which trains do not run on The C. R. I. & P. He testified about the roads mentioned as being shown on the literature offered in evidence as constituents of the Rock Island System, that is, The Chicago, Rock Island & Mexico, The Chicago, Rock Island & El Paso, The Choctaw, Oklahoma & Gulf Railroad Company, The Chicago, Rock Island and Texas and The Chicago, Rock Island & Pacific, that they were not operated as one road, but were operated separately, and that their revenues were divided just as revenues earned by The C. R. I. & G. and the T. & P. would be divided. The revenues were divided on a mileage basis. He testified that no reports were made by The C. R. I. & G. to the head of the traffic department of The C. R. I. & P.; that reports were made by The C. R. I. & G. to the President of The C. R. I. & G., Mr. Winchell, who was also the president of The C. R. I. & P.

That no representative of The C. R. I. & P. was sent or came to examine the books of The C. R. I. & G., any further than just as a representative of any other connecting line would occasionally check up business with the C. R. I. & G. That the books had never been audited from the Chicago office.

S. B. HOVEY also testified, principally on cross examination, as follows:

The contract heretofore mentioned, under which The C. R. I. & T. and The C. R. I. & P. formerly operated, was canceled by a resolution of the Board of Directors of each company in 1903, which was prior to the time The C. R. I. & G. bought the Texas road. There is now no contract between The C. R. I. & G. and The C. R. I. & P., except a traffic agreement as to the division of rates, made by the General Freight Agent of each line. This is the same character of contract that exists between The C. R. I. & G. and any other line that it interchanges business with. The C. R. I. & G. owns about fifteen or sixteen hundred freight and cattle cars, and about twenty engines, which are marked "C. R. I. & G." The C. R. I. & T. never owned either any freight cars or any engines.

67 The train dispatcher distributes cars and moves them from stations to destination as soon as they are ready to move. The train dispatcher has no power to furnish cars on The C. R. I. & G. if I instructed him not to do so.

Since I have been vice president of The C. R. I. & G. I have had

no connection whatever with the C. R. I. & P., and have had no duties to perform with any railroad other than The C. R. I. & G. I have drawn no salary from The C. R. I. & P., and had no jurisdiction whatever on it. The C. R. I. & P. pays no part of the salary of any of the general officers of The C. R. I. & G. but it pays a part of the salary of Mr. Sebree, the train master and one of the dispatchers as above stated. It pays train men who run over its line according to the number of miles of its line traversed by them. Our company pays these men while on our rails in proportion to the distance they run over it. Neither pays any part of the expense while the men are working on the other line. The traffic destined on The C. R. I. & P., the amount the Gulf road gets out of it, is the amount agreed on on division by the General Freight Agents just in the same way that the C. R. I. & G. and the T. & P. divide their revenue. Neither road pays any part of the expense of moving freight over the other line, nor pays any part of the loss sustained while in the hands of the other company by damage to freight.

Some of the men who organized the Texas road, for instance, M. A. Low and Joe Harris, were reputed to be wealthy. I have heard before of men who were worth no more than those men who secured money and constructed a line of railroad with it.

The general manager of The C. R. I. & P., Mr. Goodnow, had no jurisdiction over The C. R. I. & G. that I ever heard of. The line of road in northwest Texas, running from Texola west, now owned by the C. R. I. & G., was constructed by The Choctaw, Oklahoma and Texas Railroad Company and was purchased by an act of the legislature authorizing The C. R. I. & G. to purchase it.

The C. R. I. & G. has on deposit with The C. R. I. & P. several hundred thousand dollars, for which it received six per cent. interest per annum. When this amount is needed The C. R. I. & G. checks it out. We cannot get this amount of interest from any local bank.

Redirect examination:

In order to get a car or locomotive from that part of the
68 tracks of the Gulf Company that was formerly owned by the Texas Company to the parts of the tracks of the Gulf Company that were formerly owned by the Mexico Company and the Choctaw, Oklahoma and Texas Company, we would have to send them up through the territories over the tracks of the Pacific Company or we would have to send them over the tracks of the Fort Worth and Denver Company from Fort Worth to Amarillo and to Dalhart respectively.

A copy of the map of the system lines, as shown in the folder above referred to, is hereto appended as a part of this bill of exception and same is marked Exhibit "C" and it is agreed that same may be sent up with the record in this case for the inspection of the Supreme Court.

F. E. MITCHELL testified that he was secretary of The C. R. I & G. Railway Company; that he did not know the names of the board of directors of The C. R. I. & P. That the board of directors of The C. R. I. & G. were Mr. Hovey, Mr. Lassiter, Mr. Winchell, who was

president both of The C. R. I. & G. and The C. R. I. & P., Mr. Newby and Mr. Holloway. That there were two others whom he did not, without his books, remember. That as secretary and treasurer of The C. R. I. & G. he made no report of John Sebastian, General Passenger Agent of The C. R. I. & P. That nobody but the auditor in Fort Worth audits the books of The C. R. I. & G. and nobody comes down here to him for any information.

And there being no further evidence introduced by either the plaintiffs or the defendant in support of or against said motion, the foregoing constitutes all the testimony and evidence in the case.

Thereupon the court sustained said motion and quashed the service of citation herein on said defendant and dismissed said suit for want of jurisdiction of this court over defendant and to which action and ruling of the court in quashing said service and dismissing said suit plaintiffs then and there in open court duly excepted, for the reason that said evidence, without contradiction, conclusively shows that the defendant The Chicago, Rock Island & Pacific Ry. Co. as a foreign corporation was and is doing business in the state of Texas, and that The Chicago, Rock Island & Gulf Ry. Co. was and is the agent of said defendant company in the state of Texas and that the
69 persons whom *whom* serc*ive* of citation was made herein, as shown by the officers' returns on such process herein, and are and were the agents of said Chicago, Rock Island & Gulf Ry. Co., and that some of said persons so served with citation were the joint agents in the employ and service of both the said Chicago, Rock Island & Pacific, and the said Chicago, Rock Island & Gulf Ry. Co., and that service upon said agents as aforesaid was legal and valid service upon the defendant company and sufficient to compel said defendant to answer herein, and that the court erred in holding and ruling otherwise, and in dismissing said cause for want of jurisdiction over said defendant.

In the United States Circuit Court for the Northern District of Texas, at Fort Worth.

AUGUSTA A. PETERSON ET AL.
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

To the Honorable Supreme Court of the United States:

I, Edward R. Meek, Presiding Judge of the Circuit Court of the United States of the Northern District of Texas, sitting at Fort Worth, and at a regular term of said court, do hereby certify to your Honors for the decision of your Honorable Court, the question as to whether or not said Circuit Court under the facts disclosed by the plaintiffs' bill of exceptions herein filed acquired jurisdiction over the defendant by the service of the process as shown in said bill and as to whether or not this court erred in dismissing said cause for want of jurisdiction over said defendant. And I further certify that the judgment herein rendered is based solely on the want of jurisdiction of this court over said defendant to require it to answer and

plead herein, and that no question other than the one of jurisdiction as above set out was determined by said judgment.

70 Wherefore plaintiffs here now tender this their bill of exceptions embracing all of the foregoing matters, and as that the same be allowed by the court and filed as a part of the record herein.

STEWART & TEMPLETON,
Att'ys for Plaintiffs, Augusta A. Peterson and Ida Peterson.

We agree that the above and foregoing pages contain a true and correct statement of the proceedings on the trial of this cause, and that same may be approved as the bill of exceptions in said cause, this the 26th day of December, 1905.

N. H. LASSITER,
ROBERT HARRISON,
Att'ys for Defendant.

Examined, allowed and approved and ordered filed, this the 27th day of December, 1905.

EDWARD R. MEEK, *Judge.*

The foregoing has the following endorsement, to-wit:—
No. 320. Augusta A. Peterson *et al. vs.* The Chicago, Rock Island and Pacific Railway Company. Plaintiffs' Bill of Exceptions. Filed 27th day of Dec., 1905. J. H. Finks, Clerk By J. B. Finks, Deputy.

71 *Order to Send up Original Exhibit.*

Filed and Entered December 27th, 1905.

From the Minutes of the Circuit Court of the United States for the Northern District of Texas, at Fort Worth, November Term, 1905.

No. 320.

AUGUSTA A. PETERSON ET AL.
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

DECEMBER 27TH, 1905.

On motion of plaintiffs and of Stewart & Templeton, their attorneys of record, and upon agreement of counsel for defendant, in the above entitled cause, it is ordered that in addition to the transcript of the record on appeal in this action, the clerk of this court transmit to the Clerk of the United States Supreme Court at Washington, D. C., the following original paper filed herein to be by said clerk safely kept and returned to this court upon the final determination of this action in said Supreme Court, namely: the map shown in Exhibit "C" to the plaintiffs' bill of exceptions herein filed.

Dated the 27th day of December, 1905.

EDWARD R. MEEK, *Judge.*

From Minute book 3, page 28.

72 *Judge's Certificate.*

Filed December 27th, 1905.

In the Circuit Court of the United States for the Northern District of Texas at Fort Worth.

AUGUSTA A. PETERSON ET AL.
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

To the Honorable Supreme Court of the United States:

I, Edward R. Meek, presiding Judge of the Circuit Court of the United States for the Northern District of Texas, sitting at Fort Worth, and at a regular term of said Court, do hereby certify to your Honors for the decision of your Honorable court the question as to whether or not said Circuit Court under the facts disclosed by the plaintiffs' bill of exceptions herein filed acquired jurisdiction over the defendant by the service of the process as shown in said bill and as to whether or not this court erred in dismissing said cause for want of jurisdiction over said defendant. And I further certify that the judgment herein rendered is based solely on the want of jurisdiction of this court over said defendant to require it to appear and plead herein, and that no question other than the one of jurisdiction as set out was determined by said judgment.

December 27th, 1905.

EDWARD R. MEEK, *Judge.*

The foregoing has the following endorsement, to-wit:

No. 320. Augusta A. Peterson *et al. vs.* The C. R. I. & P. Ry. Co. Judge's certificate. Filed 27th day of Dec, 1905. J. H. Finks, Clerk, By J. B. Finks, Deputy.

73 *Petition for Writ of Error.*

Filed December 27th, 1905.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

No. 320.

AUGUSTA A. PETERSON ET AL.
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RY. CO.

To the Honorable Judges of the Circuit Court of the United States for the Northern District of Texas:

Your petitioners, Augusta A. Peterson and Ida Peterson, respectfully represent that heretofore on to-wit: the 21st day of November

1905, judgment was rendered in the above styled and numbered cause in favor of the defendant and sustaining defendant's motion to quash the service of citation had herein on the defendant, and dismissing plaintiffs' suit against said defendant and charging and adjudging the costs of said proceeding against the plaintiffs and that in rendering said judgment, as aforesaid, there are manifest errors.

Your petitioners have filed herein their assignment of error and now pray for citation to remove said proceeding and judgment to the Supreme Court of the United States at Washington, D. C. for revision and reversal, and will ever pray.

STEWART & TEMPLETON,
Att'ys for Petitioners.

Allowed: December 27th 1905.
EDWARD R. MEEK, *Judge.*

The foregoing has the following endorsement, to-wit:
No. 320. Augusta A. Peterson *et al. vs.* The Chicago, Rock Island & Pacific Railway Company. Petition for writ of error. Filed 27th day of Dec. 1905. J. H. Finks, Clerk By J. B. Finks, Deputy.

74 *Writ of Error Bond.*

Filed December 27th, 1905.

In the Circuit Court of the United States for the Northern District of Texas, at Fort Worth.

No. 320.

AUGUSTA A. PETERSON ET AL.
vs.
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY.

Know all men by these presents: That we, Augusta A. Peterson and Ida Peterson, as principals, and John C. Harrison and W. B. Harrison, as sureties, are held and firmly bound unto The Chicago, Rock Island and Pacific Railway Company, defendant, in the above entitled cause in the sum of Five Hundred Dollars, for the payment of which well and truly to be made, we hereby bind ourselves, our heirs, executors and administrators, jointly, severally and firmly. Sealed with our seals using scroll and signed with our name*d* this 27th day of Deccember 1905.

The condition of the foregoing obligation is such, that whereas, lately at a term of the Circuit Court of the United States for the Northern District of Texas, at Fort Worth, in a suit pending in said court between Augusta A. Peterson and Ida Peterson, plaintiffs, and The Chicago, Rock Island & Pacific Railway Company, defendant, No. 320 on the docket of said court, a judgment was rendered on the 21st day of November 1905, sustaining a motion filed in said court by defendant to quash the service of citation had

therein on defendant and dismissing plaintiffs' said suit and rendering judgment therein against the plaintiffs for all cost in said proceeding. And, whereas, the said plaintiffs, the above bounden Augusta A. Peterson and Ida Peterson have obtained a writ of error and have filed a copy thereof in the office of the clerk of said court to reverse said judgment and also a citation directed to said Chicago, Rock Island & Pacific Railway Company and its attorneys of record N. H. Lassiter and Robt. Harrison, citing and admonishing them to be and appear at the United States Supreme Court to be holden in Washington, D. C. within thirty days from the 23rd day of February 1906.

75 Now if the said Augusta A. Peterson and Ida Peterson, plaintiffs, shall prosecute their writ of error to effect and pay all damages and costs of suit and pay the costs on appeal, if they shall fail to make good their plea, then the above obligation to be void otherwise to remain in full force and effect.

AUGUSTA A. PETERSON,
IDA PETERSON,
By S. W. STEWART,
Ag't and Att'y.
JNO. C. HARRISON.
W. B. HARRISON.

Approved December 27th 1905.
EDWARD R. MEEK, *Judge.*

The foregoing has the following endorsement, to-wit:—
No. 320. Augusta A. Peterson *et al. vs.* The Chicago, Rock Island & Pacific Railway Company. Writ of error bond. Filed 27th day of Dec. 1905. J. H. Finks, Clerk By J. B. Finks, Deputy.

76 *Assignments of Error.*

Filed December 27th, 1905.

In the United States Circuit Court for the Northern District of Texas, at Fort Worth.

No. 320.

AUGUSTA A. PETERSON ET AL.
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

Now comes the plaintiffs in the above and entitled cause, by their attorneys of record and say that in the record and proceedings in said case there are manifest errors to their prejudice in this:

The court erred in quashing the service of process on defendant herein and dismissing plaintiffs' said suit and taxing them with the costs thereof, and in holding that this court had no jurisdiction

over the defendant for the reason that the evidence introduced on the hearing of defendant's motion to quash service, showed conclusively that the defendant is a foreign railway corporation, doing business in the state of Texas as a common carrier of freights and passengers and that The Chicago, Rock Island & Gulf Railway Co. is the agent of said defendant company in the state of Texas and that the persons served with process herein were and are the officers and agents of said Chicago, Rock Island & Gulf Ry. Co. and of the defendant company and that some of the persons so served with process therein were in the joint service of both The Chicago, Rock Island & Pacific Railway Co. and The Chicago, Rock Island & Gulf Ry. Co. and that the service of process upon said agents as aforesaid, was legal and valid service upon the defendant The Chicago, Rock Island & Pacific Ry. Co. and was sufficient to compel it to answer in this cause. And for the errors above assigned plaintiffs pray that the judgment and order of this court quashing the service of citation on defendant, and dismissing said suit, be reversed and said cause remanded for further proceedings therein.

STEWART & TEMPLETON,
Att'ys for Pl't'ffs.

The foregoing has the following endorsement, to wit:
No. 230. Augusta A. Peterson *et al. vs.* Chicago, Rock Island & Pacific Ry. Co. Assignments of error. Filed 27 day of Dec. 1905. J. H. Finks, Clerk By J. B. Finks, Deputy.

77 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Circuit Court of the United States for the Northern District of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between Augusta A. Peterson and Ida Peterson, a minor, plaintiffs in error, and The Chicago, Rock Island & Pacific Railway Company, defendant in error a manifest error hath happened, to the great damage of the said Augusta A. Peterson and Ida Peterson, a minor, plaintiffs in error, as by their complaint appears. We being willing that error if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in -his behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., not exceeding thirty days from 23rd day of February 1906, being the date of issuance of the citation herein, in the Supreme Court of the United States to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 23rd day of February, in the year of our Lord one thousand nine hundred and six.

[The Seal of the U. S. Circuit Court, Northern Dist. Texas, Ft. Worth.]

J. H. FINKS,
Clerk of the Circuit Court of the United States for the Northern District of Texas,
By J. B. FINKS, *Deputy.*

Allowed by
EDWARD R. MEEK,
United States District Judge.

FEBR'Y 23, '06.

Service of the above writ of error is hereby fully accepted.

ROBERT HARRISON,
N. H. LASSITER,
Att'ys for the C., R. I. & P. Ry. Co.

78 [Endorsed:] No. 320. Augusta A. Peterson *et al. vs.* Chicago, Rock Island & Pacific Ry. Co. Writ of Error. Filed 23 day of Febr'y A. D. 1906. J. H. Finks Clerk. By J. B. Finks Deputy.

79 UNITED STATES OF AMERICA, *ss:*

The President of the United States to The Chicago, Rock Island & Pacific Railway Company and N. H. Lassiter and Robert Harrison, attorneys of record, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the City of Washington, within thirty days from the date of this writ, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the Northern District of Texas, wherein Augusta A. Peterson and Ida Peterson are plaintiffs in error and The Chicago, Rock Island & Pacific Railway Company is defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 23rd day of February A. D. 1906 and of the independence of the United States the 130th year.

[The Seal of the U. S. Circuit Court, Northern Dist.. Texas, Ft. Worth.]

EDWARD R. MEEK,
United States District Judge.

Service of the above citation is hereby accepted the same as if it had been fully and legally served on this day.

THE CHICAGO, ROCK ISLAND & PACIFIC RY. CO.,
By N. H. LASSITER,
ROBERT HARRISON, *Att'ys.*

Febr'y 23, 1906.

80 [Endorsed:] No. 320. Augusta A. Peterson *et al. vs.* Chicago, Rock Island & Pacific Ry. Co. Citation. Filed 23 day of Febr'y A. D. 1906. J. H. Finks, Clerk. By J. B. Finks, Deputy.

81 *Order for Transcript.*

Filed December 29th, 1905.

Be it remembered, That at a regular stated term of the Circuit Court of the United States for the Northern District of Texas, begun and holden at Fort Worth, on the — day of November A. D. 1905, and ending on the — day of ——, 1906, the Honorable Edward R. Meek, District Judge presiding, the following cause came on to be heard upon defendant's motion to quash the service of process on defendant herein, to-wit:

No. 320.

AUGUSTA A. PETERSON and IDA PETERSON
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

II.

Plaintiffs' original petition.

III.

Original summons and return thereof.

IV.

Original motion of defendant to quash service.

V.

Affidavits of Hovey, Sebree and Merrill, denying agency.

VI.

Application of plaintiff for additional service of process.

VII.

Supplemental summons and return (Thomas and Turpin).

VIII.

Supplemental motion to quash.

IX.

Affidavits of Thomas and Turpin denying agency.

X.

Order of court sustaining motion to quash service and dismissing suit.

XI.

Plaintiffs' bill of exceptions.

XII.

Order to send up map as exhibit.

XIII.

Petition for writ of error.

82 XIV.

Writ of error bond.

XV.

Assignments of error.

XVI.

Order allowing writ of error.

XVII.

Judge's certificate.

XVIII.

Writ of error.

XIX.

Citation in error.

XX.

Clerk's certificate.

The foregoing has the following endorsement, to-wit:—
No. 320 Law. Augusta A. Peterson *et al. vs.* C., R. I. & P. Ry. Co. Order for transcript. Filed 29th day of Dec. 1905. J. H. Finks, Clerk. By J. B. Finks, Deputy.

83 *Clerk's Certificate.*

I, J. H. Finks, Clerk of the Circuit Court of the United States in the Fifth Circuit and Northern District of Texas, do hereby certify that the above and foregoing is a full, true and correct transcript of the record, bill of exceptions, assignment of errors, and all proceedings in cause No. 320, wherein Augusta A. Peterson *et al.* are plaintiffs and the Chicago, Rock Island & Pacific Railway Company is defendant, except that the original writ of error and original citation in error are included therein, instead of copies thereof, as fully as the same remain on file and of record in my office at Fort Worth, Texas.

Witness my hand officially, and the seal of the Circuit Court of the United States for the Northern District of Texas, at Fort Worth, this the 27th day of February A. D. 1906, and of American Independence the 130th year.

[The Seal of the U. S. Circuit Court, Northern Dist. Texas, Ft. Worth.]

J. H. FINKS,
Clerk of said Court,
By J. B. FINKS,
Deputy.

Endorsed on cover: File No. 20,131. N. Texas. C. C. U. S. Term No. 225. Augusta A. Peterson and Ida Peterson, a minor, plaintiffs in error, *vs.* The Chicago, Rock Island & Pacific Railway Company. Filed March 16th, 1906. File No. 20,131.